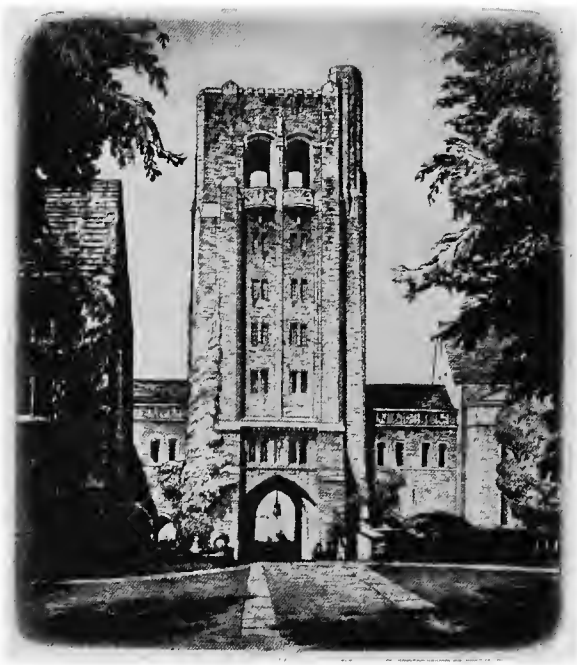

TREATISE

LAW OF LIFE ASSURANCE,

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TO

THEOPHILUS PARSONS, LL. D.,

Dane Professor of Law,

IN HARVARD UNIVERSITY,

This Treatise is Inscribed by his Friend

THE AUTHOR.

PREFACE.

THE present work is designed not only for the use of the members of the bar, but also for those who are engaged in the business of assuring lives. The growing importance of the subject, owing to the continued increase in this branch of insurance; the fact that no American work has yet appeared and that the English treatises have connected this with the other branches of insurance, so that there is no work devoted exclusively to this subject, have induced the author to offer the present work to the public.

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CHAPTER I.

Of the Origin and History of Life Assurance.

1. Of its origin and early history.
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The origin of the application of the contract of insurance to the subject of lives, like that of other institutions, which have been introduced by slow and imperceptible degrees, is wrapt in some obscurity.

Although the determination of the exact period when such contracts were first entered into, may be of no great practical importance, yet it is interesting, as matter of history, to see what state of things preceded and gave rise to the system; and tracing it down from its first crude conceptions, to note the changes and improvements that have been successively intro-

duced into it, all tending, in a greater or less degree, to render its principles better understood, and the success of its operations more sure and reliable.

An author,[a] writing upon this subject, has well remarked, that "the principles of life assurance indicate too great an advance in science and the philosophy of society, to be attributed, even in the most imperfect form, to any ancient period." And, accordingly, we find that although the application of the contract of insurance to marine risks was, at an early day, known and in use among the Rhodians and other nations who inhabited the sea board and were engaged in commerce; and that later, in 1609, the idea was conceived of applying it to losses by fire,[b] yet it was not till long after its application to these subjects was well understood and in general use, that it was applied to the subject of lives.

It has been considered by many, that the idea conceived by an Italian of Naples, named

[a] Blaney.

[b] History of Inventions and Discoveries, by J. Beekman, London, 1848, vol. I, p. 241.

Tonti, about the middle of the 17th century, of several persons uniting together, each paying a fixed sum, to be divided among those who survived at the end of the year, was the origin of this species of contract, still we must look to England for the first authentic account of any application of it, at all analogous to the modern system. After the publication on the subject by Huygeris, in 1658, which was followed in a few years by a pamphlet on Life Annuities, by John De Witt; and especially after the appearance, in the latter part of the 17th century, of the remarks and tables of Dr. Halley, on the comparative mortality of mankind and the consequent value of annuities for lives; the theory of life assurance having begun slowly to be developed and more universally understood, its principles were put in practical operation.

They were first undertaken by private individuals, as appears from a case in Vernon,[c] and shortly after we find them undertaken by associations.

In 1689, a scheme was set on foot, having for

[c] Whittingham *vs.* Thornburgh, 2 Ver. R. 206.

its object, the benefit of the widows and orphans of clergymen and others, which association was known as "The Mercers' Company." [d]

In 1699, another association was established under the name of "The Society for Widows and Orphans." [e] About the same period other associations were formed for the benefit of particular classes, as the members of the army, navy, clergymen, schoolmasters, &c.

These associations, founded on the principles established in the works before mentioned, were of the nature of provident and reversionary societies, and though, as their names indicate, they were designed chiefly for the benefit of particular classes, and though at that time very imperfect ideas on the subject of life assurance prevailed; yet they may nevertheless be considered as founded on the same principles as the modern life assurance associations.

In 1706, the Bishop of Oxford, Sir Thomas Allen, and other benevolent individuals, observing the benefits to be derived from institutions of this character, by persons of small

[d] Pocock, p. 93.

Ibid, p. 94.

means, solicted and obtained from Queen Anne, a charter for a society, under the name of "The Amicable society for Perpetual Assurance." The object of this society, in its original formation, was simply to enable persons, without regard to age, to subscribe annually some portion of their income, in order that the representatives of each subscriber might, upon the decease of the person, receive such a sum of money as the funds of the society might enable them to pay, according to the number of deaths which might have happened during the year; so that in every case, whatever might be the age of the person, or the period for which the assurance was effected, the same premium was charged.[f] Nothing could show more clearly the imperfect idea that was still entertained of the principles of life assurance, and the imperfect tables in use, than that each person, irrespective of age, paid the same premium, when the value of the life in a great measure depended on the age of the assured.

As other tables, more extensive and consequently more correct, were formed, and as other

[f] Blaney, p. 5.

companies were successively chartered, competition increased, and necessarily brought down the premiums, and led to a more minute examination of the principles of life assurance, by the test of experience and mathematical rules.

Other companies, on more extensive plans and on the proprietary system, with a fixed capital and graduated premiums, were then formed, and intended for all individuals, and not limited, as the Amicable and others before named, to particular objects or classes. We find afterwards, in 1807, that the Amicable company, in obtaining their fourth charter, modified their original plan and graduated their premiums according to the age and circumstances of the person.

In 1762, in consequence of some lectures read by Mr. Thomas Simpson, an eminent mathematician, and on his recommendation, a company was founded, called "The Society for Equitable Assurance." This was to be conducted on a plan altogether different, and until then untried, upon what is now called the mutual principle, according to which, the persons assured are alike participators in the profits and

losses of the concern; but it was refused a charter, because its plan was considered dangerous and visionary.

Notwithstanding the unfavorable idea which was at first entertained of this new system, the above society has been one of the most extensive and successful in its operation.[g]

Other companies have since been chartered in England, and the number has been as high as eighty; some have ceased to exist, but the capital now embarked in England alone, in this branch of insurance, amounts to many millions.

2. *Of its Introduction and Success in the United States and Other Countries.*

At least as early as 1814, the practice was introduced in the United States, when a company was chartered in New York, under the name of "The Dutchess County Insurance Company," which to marine and fire risks joined the insurance of lives.

In 1815, another company was incorporated under the name of "The Union Insurance Com

[g] Blaney, p. 7.

pany," which, as well as the former, took life risks together with marine and fire risks.

It was not, however, till 1818, that a company was formed in this country, having for its sole object the assurance of lives. This was incorporated in Massachusetts, under the name of "The Massachusetts Hospital Life Insurance Company." It still exists, and has its office in Boston.

Some five or six others have since been incorporated in that state,[h] most of which are conducted on the mutual system.

In New York,[i] Pennsylvania[j] and Connecticut,[k] it has met with equal success, and com-

[h] "New England Mutual;" "Union Mutual;" "Equitable Life Assurance Society;" "Washington Mutual Life Insurance Company," Worcester.

[i] "Eagle;" "Mutual Life;" "New York Life Insurance Company;" "New York Life Insurance and Trust Company;" "United States Life Insurance Company, in the city of New York:" "Manhattan Life Insurance Company."

[j] "Equitable;" "Girard;" "Pennsylvania;" "Penn Mutual."

[k] "Hartford;" "American Mutual;" "Connecticut Mutual Life."

panies are also to be found in some of the other states.[l]

The companies are usually established in the larger cities, but their agencies extend throughout the state, and not unfrequently are established in adjoining states.

Some of the English companies, have also agencies in this country.[m]

The capital invested in this branch of insurance in the United States, can not be less than ten millions of dollars.[n]

[l] "Ohio Life and Trust Company;" Cincinnati, Ohio; "Mutual Benefit Life Insurance Company;" and "Trenton Cash Mutual Life Insurance Company," New Jersey.

[m] "Albion Life;" "United Kingdom;" "National Loan Fund Life Assurance Society."

[n] The energetic and restless character of the American people, the many and varied opportunities open in a new country to individual exertion and enterprise, sufficiently account for the late introduction of life assurance into this country and its hitherto slow, though steady increase. As the country grows older, the opportunities for individual enterprise will become fewer; the class of persons dependent on a fixed income will be multiplied, and the business of assuring lives will rapidly increase, as it has in England, and if honestly and prudently conducted, will become one of the most useful, extensive and beneficial of institutions.

Having now traced the origin of life assurance — its first practical application, its introduction into and success in the United States — it may not be inappropriate or uninteresting to give a brief account of its reception by other countries.

In France, as appears by an old work,[n] and while the principles of life assurance were known elsewhere, it was a contract wholly forbidden, as being contrary to good morals. It was expressly forbidden by an ordinance in 1681,[p] based upon a maxim of the civil law, that the life of a freeman is above all valuation, "liberum corpus æstimationem non recipit." But this maxim, though perhaps true in itself, is not applicable to life assurance, and the prohibition of assurances, on this ground, seems justly, as Mr Marshall says, "a glossing over with a fine sentiment, a motive of policy which could not be mentioned without conveying an insinuation to the discredit of the national character." The views of the French government must

[n] Le Guidon, ch. xvi, art. 5.

[p] Tit. des Assurances, art. 10.

have undergone a change, for two companies with this object have since been incorporated.[q]

These companies, although they have extensively circulated their schemes, established agencies in various parts of France, and assure at as reasonable rates as other companies, have, however, met with little success.[r] The French have attempted to introduce the practice into Italy, but have signally failed.

And the reason assigned for their failure seems just: "that the present character of the Italians, deteriorated as it has been, for so long a period, by the oppressions of despotic governments, little disposes them to sacrifice any share of their present enjoyments and personal comforts, for the sake of future benefits to others."[s]

Three life assurance companies have also been established in the Netherlands, which meet with some success, and the government has prohibited the introduction of foreign companies.[t]

[q] "La Compagnie d'Assurances Generales;" "La Compagnie Royale d'Assurances."

[r] Edinburgh Review, vol. xlv., p. 480.

[s] Ibid [t] Ibid.

Several small corporations exist in Denmark, but do nothing.

From this, we may see, that it is in England and America alone, that an institution which appears to be so beneficial to the public, has met with a success at all commensurate with its merits.

4. *Of the Treatises upon the Subject.*

Of the authors who have written upon this subject, some have confined themselves to an explanation of its principles, to the formation of tables and similar matters; others have treated the subject only in a legal manner. The works of the former, designed for the benefit of those who have formed or intend to form themselves into associations, for the purpose of assuring lives, and for those intending to be assured; the latter to explain and elucidate the rights, duties and liabilities of the different parties to the contract when formed.

The first authentic publication on the subject, was by Huygeris, in 1658. Afterwards in 1671, Jean De Witt published a work in Holland, entitled "De Vardye Von de Lifrenten."

In January 1692, Dr. Halley published an ar-article in the Philosophical Transactions, which unfolded for the first time the method of calculating annuities for lives; he also published a table founded on the mortality observed at Breslau — which are known as the Breslau tables. In 1724 appeared a very ingenious work by the celebrated Abraham De Moivre, on the doctrine of chances. In 1742, Mr. Thomas Simpson, an eminent mathematician, and who may be considered, as before stated, the founder of the mutual system of assurance, published a work on the doctrine of annuities and reversions.

About the same time, in France, the subject was pursued by De Parcieux, St. Cyran and Duvillard — the former of whom, in 1746, published, his "Essai sur les Probabilites de la Duree de la Vie Humaine."

In Germany we find Euler, Süssmilch and Wargentin. In 1769, Mr. James Dobson turned his attention to the subject. But it is to Dr. Richard Price, who applied himself to this subject, about this time, that life assurance is most indebted. He published in 1769, a work on

Reversionary Payments, designed chiefly for those persons who wished to form themselves into associations to make provisions for widows and children. It contained remarks on the probabilities and expectations of life, on the medium duration of widowhood and marriage, and directions for forming tables. It also contained tables constructed from the burial registers of the parishes of Norwich, Chester, and Northampton; those of Northampton were the most accurate and extensive; and have justly had a great celebrity and extensive use among those engaged in this business. He also added tables constructed from the registers of births and deaths, which had been kept in Sweden for over 21 years, and which are known as the Swedish tables.

The edition of this work, edited by Mr. William Morgan, and published in London, in 1803, and entitled, "Observations on Rerversionary Payments, the Doctrine of Life Annuities and Political Arithmetic," will be found of great value to those engaged in this branch of assurance.

In 1813, Mr. Francis Bailey published, in

London, a work entitled, "The Doctrine of Life Annuities and Assurance, analytically investigated and practically explained."

In 1815, appeared a very valuable treatise, on the valuation of annuities and assurances on lives and survivorships, by Joshua Milne.

In 1828, Mr. Morgan published a treatise on the rise and progress of the Equitable Society.

In 1826, Mr. Charles Babbage published a treatise entitled "A Comparative View of the various Institutions for the Assurance of Lives."

In 1842, a very valuable work on this subject was published by Mr. Pocock.

Of the legal treatises on the subject may be mentioned those of Beaumont, Blaney, Farren, and Ellis, which appeared between 1826 and 1843. Of these, the one by Mr. Ellis, and which is also to be found in the fourth volume of the Common Law Library, is far the best.

Most of the last named authors, have also connected with their works the subject of fire insurance. The above is a brief summary of the authors who have treated the subject either legally or scientifically—for a more detailed statement we refer the reader to the extensive

bibliographical index, to be found at the end of Mr. Pocock's excellent work on assurance.

5. *Tables of Mortality.*

A few of the principal tables of mortality, with the expectation or mean duration of life, derived from them, have been inserted at the end of this work, and it may not be out of place to give a brief account of their origin and formation.

Tables, or bills of mortality, as they are sometimes called, are registers, containing the number of births, marriages, and deaths, occurring in a particular locality; and when correctly kept, are of great value in showing the natural healthiness and increase of the population of such place. But when these tables are extended, so as to embrace a large section of country, or several countries, and when, in addition to the above data, are added the ages and sex of the persons who die, the season of the year, and diseases of which they died; they are rendered far more useful to the insurers, in furnishing the means wherefrom to form tables of the probable duration of life, on

which to found calculations for estimating the value of any proposed risk. The larger the extent of country, the longer the series of years, and the greater the number of persons embraced in a table, the more accurate will be the mean result arrived at.

The first bills of mortality were those of Breslaw, in Silesia. from which Dr. Halley formed his tables, which are known as the Breslaw tables.

The Northampton tables, were formed by Dr. Price, from the mortality of that town, in the years 1741 — 1780. The number of male and female deaths, was very nearly equal. These tables have been adopted by the Supreme Court of the state of New York,[a] for calculating the value of estates for life, curtesy and dower. The Carlisle tables, were formed by Mr. Milne, from the observations of Dr. Heysham, upon the mortality of that town in the years 1779—1787. These tables are usually employed by the assurance offices as giving results most favorable to them.

[a] Supreme Court Rules, 76.

In Sweden, accounts have been kept of the births, marriages, and burials, and of the number of both sexes that died, at all ages, in every town and district; and also at the end of every period of five years, of the number living at every age. At Stockholm a society was established, whose business it was to superintend and regulate the enumerations, and to collect from the different parts of the kingdom, the registers, in order to digest them into tables of observation. These tables were begun in 1755, and tables containing the result from 1755 to 1763, have been published by Mr. Wargentin.[v]

A table has been formed by the government of Great Britain; and another by the Equitable Society in London, from their own experience, derived from the mortality of the assured lives in their office. Tables have also been formed and published in other parts of England, Holland, and other countries; but the Carlisle, Northampton, Breslaw, and Swedish tables, above

[v] Rees' Encyclopædia, articles mortality, annuity, expectation, survivorship, &c.

named, and especially the Carlisle and Northampton, are the only ones in general use.

It is to be regretted that steps were not early taken in this country with this object, as such tables would not only be useful to those engaged in life assurance and annuity transactions, but would possess great value for the public at large, in furnishing the means of ascertaining the healthfulness of particular localities, and the law governing the mortality observed. Steps, however, have recently been taken, by the United States government, and the first fruits appeared in the late census returns;[w] these must, however, as yet be too imperfect, to be of much value; it is trusted, however, that the work once undertaken, will be continued, and that before many years we shall have tables adapted to this country, sufficient for the calculation of the usual contingencies.

[w] These returns will be found in the appendix.

CHAPTER II.

OF THE CONTRACT OF LIFE ASSURANCE — MANNER OF EFFECTING IT — PURPOSES TO WHICH IT MAY BE APPLIED, AND BENEFITS TO BE DERIVED THEREFROM.

1. Contract of assurance defined and explained.
2. Assurance when in the nature of an indemnity.
3. Manner of effecting an assurance.
4. Of the Policy.
5. Of the different purposes to which the contract is applicable.
6. Of the benefits to be derived therefrom.

1. *Contract of Assurance defined and explained.*

Life assurance is a contract, by which one party in consideration of a sum paid or to be paid, agrees with another, to pay the person for whose benefit the assurance is effected, a specified sum on the death of the person whose life is assured, or on the happening of an event depending on such life.[a]

[a] It is a difficult task, to give a comprehensive definition of any subject, and one which at the same time shall be clear, simple and free from verbosity. The usual form of definition of this

The instrument which is the evidence of the contract, is called the policy; the party who undertakes the risk, the assurer; and the party who is to receive the benefit of the assurance, the assured. Where one person insures the life of another, he is, strictly speaking, "the assured;" and the person whose life is the subject of such assurance, "the life-assured."[b]

subject having been departed from above, it may not be out of place to state the omissions of, and additions to, the one in the text. The clause "or an annuity equivalent," after the words "specified sum," has been omitted on the ground that the latter includes the former. It has been thought unnecessary to qualify the term "on the death of the life-assured," for where the assurance is for a limited period and such period has expired, the contract is at an end, and it is self evident that a death occurring thereafter, can have no effect thereon. The clause "or on the happening of an event depending on such life," has been added, for contracts of life assurance are not now limited to the single case of the payment of a sum on the death of the assured, but are frequently made to pay a sum on the person assured attaining a certain age, or being alive at a certain period.

[b] The person whose life is the subject of assurance, is frequently, though incorrectly, called the assured, even where a person effects an assurance on his own life, the sum to be paid to his representatives; he is not strictly speaking "the assured," but "the life-assured."

The consideration which the assurer receives for undertaking the risk is called the premium; this may be payable at one time or periodically, according to agreement; it is, however, usually made payable periodically.

2. *Assurance when in the Nature of an Indemnity.*

We have defined the contract as absolute, to pay a specified sum on the death of the person whose life is the subject of the assurance, because it is so on its face. In many cases, however, it is to be considered as a contract in the nature of an indemnity, and not a contract to pay absolutely a specified sum on the happening of the event assured against. Thus where one party insures the life of another, as a creditor that of his debtor, it is to be construed as a contract in the nature of an indemnity, and the sum to be paid on the death of such assured debtor will not always in such a case, be the sum specified in the policy, but may be less, though never more than the sum stated in the contract, according to the interest which such creditor, may have

in his debtor, (i. e. the amount of his debt), at the time of his decease. For it has been held, that a creditor can not recover of the assurer, any greater sum than was due to him from such assured debtor, at the time of his death: and that even if the debtor died insolvent; yet if the debt is paid aliunde, the creditor can not recover of the company.[c]

Even where a person assures his own life, it may be considered as an indemnity against the loss which such person considers his death may occasion; in all such cases however the full specified sum is due from the assurer, there being no limit to the interest which one may have in one's own life; and no limit to the amount which such person may be entitled to have paid to his representatives, other than that specified on the face of the policy.

3. *Manner of effecting an Assurance.*

A person desiring to effect an insurance, applies to a company, (for in this country the business is universally conducted by compa-

[c] Godsall vs Bolders, 9 East 81.

nies,) with whom he desires to effect the assurance. By them he is furnished with what is denominated a proposal for assurance; which is a printed list of interrogatories, framed with a view to elicit every thing connected with or concerning the party whose life is proposed to be insured, which the underwriters deem in any way material to the risk; besides the questions to be answered by the person whose life is to be insured, it also contains a list of questions to be answered by the party's medical attendant, and also questions to be answered by a friend of the party. Blanks are left in the proposal, opposite the questions, to be filled in with the answers of the respective parties. The questions usually required to be answered by the party whose life it is proposed to insure, are; name and residence of the person or persons for whose benefit assurance is proposed—amount of insurance applied for—name, occupation, and residence of the person whose life is proposed for insurance—place of birth of the person whose life is to be insured, age next birth day—month and day of month—is the

party whose life is to be insured married or single? Has the party resided in the southern or western states, or in foreign climates, and if so, what was the party's health at the time? Has the party had the small pox or been vaccinated? If the party's parents, brothers, or sisters, or either of them, have died or been afflicted with insanity, scrofula, consumption, or any pulmonary complaint, state with which disease, and at what age; with the age and present state of health of those living.

Has the party been afflicted since childhood with fits, convulsions, rupture, or scrofula? If so, which, and when? Has the party had habitual cough, bronchitis, asthma, spitting of blood, or any disease of the lungs? If so, which and when?

Has the party had palpitation or other disease of the heart, apoplexy or dizziness of the head, liver complaint, or gravel? If so, which and when? Has the party had dropsy, gout, rheumatism, bowel complaint, or any severe disease, during the last seven years, and if so, which and when? Is the party now

afflicted with any disease or disorder? If so, what? Name and residence of the party's medical attendant—name and residence of an acquaintance to be referred to. Is the party's life insured, or has it been? Has application been made to this or any other office? If so, whether accepted or not? There is also a printed declaration in the proposal to be signed by the party, to the effect that the answers are true, and no material circumstance or information has been concealed or withheld touching the past or present state of the health of the party—and if it is on the life of another, that the party has an interest in the life proposed to be insured to the extent named in the policy, and an agreement that this statement and declaration shall form and be the basis of the contract between the assured and the company; that if any untrue or fraudulent statements are contained in the proposal, the policy, with all the money paid thereon shall be forfeited to the company; and that the assurance shall not be binding until the premium shall have

been paid to the company or to some accredited agent.

The questions to be answered by the party's medical attendant, and those by the acquaintance of the party, are of nearly similar character and effect. Upon the receipt of the proposal with the respective answers inserted, the insurers determine whether and upon what terms they will insure; this of course is based on the information derived from the proposal, and varies according to the age, health, way of life, and other circumstances, of the life to be insured.

4. *Of the Policy.*

If the company undertake the assurance, and their terms are accepted, a policy,[d] which is a deed poll under the seal of the company, and signed by the president and secretary, or whoever is authorised by the company, is made out.

The policy contains, in substance, the amount insured, the name of the person assured, the premium, the duration of the risk—and if it is

[d] For form of a policy see appendix.

for a series of years and the payments periodically, there is often a clause that the policy is to cease, if the premium is not paid at the time stated, or in a limited time after that period, the party continuing in as good health. The substance of the answers in the proposal are also usually inserted. There are also usually clauses that the policy shall be void, if the party commit suicide, die by his own hands, or in a duel, or by the hands of justice; also that the policy shall be void if the assured shall visit, without the consent of the company, the places prohibited by the policy, or make a voyage in the manner or during the seasons excepted in the policy, or be engaged as engineer or fireman on any locomotive or with any steam engine, or be employed in the manufacture of gun powder, or become addicted to intemperate habits to a degree to impair health, and that if the policy becomes null and void by reason of any act of the assured, the premiums shall be forfeited. Some companies are more liberal in their terms, allow a greater range of travelling, and their policies do not contain all the clauses above

named: they all however differ but slightly, and the form given in the appendix differs but little, in form or substance, from those in general use.

As to the clauses restricting the person, whose life is the subject of assurance, from making a voyage, or visiting certain places, (generally the southern states during the summer months,) these are frequently relaxed, the party paying therefor a slight extra percentage as a remuneration for the increased risk. The occupation of an engineer and fireman about a steam engine, and of a person engaged in the manufacture of gun powder, are deemed extra hazardous, and classed as extra risks, but persons engaged in these occupations can doubtless be assured, by paying therefor an increased rate of premium, by express arrangement with the assurers.

5. *Of the different Purposes to which the Contract is applicable.*

Of late years the business of assuring lives has greatly increased, and the principles on

which those contracts are based, have become better and more generally known. The purposes to which such contracts may be advantageously applied have correspondingly increased, and instead of being confined to the single case of providing against the loss which widows and orphans may experience from the removal of those who while living sufficed for their support and education, as was the object of these institutions in their origin, as stated in a previous chapter, we now find them extended and applied to a variety of purposes, of which the one above stated forms but a small part.

We do not intend to include here, the various schemes that have lately sprung up, such as those for insuring against accidents, live stock, &c., but only those risks which are now undertaken by the regularly organized life assurance companies of the present day, risks which may be the subject of strict mathematical calculation.

Assurance, as now undertaken, may be classed under three heads. Assurance for life or years, contingent assurance, and survivorship assur-

ance. Assurance for life, is where the sum is to be paid absolutely on the death of the party whenever the same may occur. Assurance for years, is where the sum is payable, in case the party, whose life is assured, dies within a determinate period, as one or more years. Contingent assurance, or as it is sometimes called the assurance of one life against another, is where the amount is payable in case one of the parties is alive at the decease of the other. Survivorship assurance is where two or more lives are the subject of assurance, the sum to be paid to the survivor. There are other applications of this contract, occurring either under one of the above heads or partaking somewhat of each, so as to meet almost any desired case. Assurances are also made, the sum to be paid on the party attaining a certain age, or being alive at a certain period. There are also modifications, to meet the pecuniary as well as the other wants of individuals; thus the premium may be payable in gross, in one sum, on the taking out of the policy, or in small sums payable periodically. The premiums may also

be made payable, so that the sum payable by the assured may be small at first and increase at every successive payment; these are called ascending premiums. They may also be made larger at first and decrease with every successive payment; these are known as descending premiums. The premium may also be made payable periodically, to cease after a certain number of payments; it is then called a terminable premium.

It will thus be seen, that almost all conceivable cases are provided for; the same data however furnishing the basis and sufficing for the mathematical calculation of the different modifications. We come then, naturally, to speak of the application of these modifications to the varied wants of individuals, and illustrate the peculiar advantage of each.

6. *Of the Benefits derivable from Life Assurance.*

To persons of fixed and limited incomes, as clergymen, professors, clerks, officers of the army, navy, and others who are dependent upon a

regular salary, without much prospect of any great change in it; and to all those who are supported by a fund terminable at their own death or on the death of another, the contract of assurance is beneficial. By assuring their lives, and paying a small sum each year, without much detriment to themselves, they are enabled to obviate the loss which their families might suffer from their death. And though, in many cases, a party may in time pay in premiums the full amount of the sum insured, and even more, still there is the chance equally open, that he may not; and even where the assured does in the end pay in premiums the full amount, it is doubtful whether, if he had not assured, he would have laid by the premiums, or whether he could have invested such small sums as advantageously.

Assurances for years instead of for the whole term of life, may be of advantage to those who expect that, if they live beyond the limited period, they can provide for themselves, while if they die within that period, they will not leave their families entirely unprovided for.

Assurance may also be used as a means of gaining credit, the borrower assuring his life for the benefit of the lender, and as security for the amount lent. It was frequently resorted to at the time of the late California excitement, where parties without means desired to raise them, and had no security to give; by assuring their lives and assigning the policy by way of security, they were, in many cases, enabled to raise the sum desired.

A creditor in doubt as to the security of his debt, by assuring the life of his debtor to the extent of his debt, may thus effectually secure it against a loss which might result from the death of his debtor. Individuals in debt, who, although unable, have nevertheless a desire and hope of ultimately being able to pay the same, are often willing to assure their lives for the benefit of their creditors; if they are afterwards enabled to discharge their indebtedness the policy enures to their own benefit, and provides a fund for their families after them, or may be the means of gaining future credit.

Assurances are often made, the amount to be

paid on the assured attaining a certain age. By this means a party can provide for the payment of a sum due at that time, or can raise a sum to advance a child in the world, or a marriage portion for a daughter.

Where an individual is single, and has no one looking to him for support, and supports himself by his own exertions, by assuring his life, the sum to be payable on his arriving at a certain age, he is enabled to purchase an annuity and cease from his exertions, or at least materially lessen them as he advances in life, and becomes less and less able to provide for his own support.

To those who are young, and whose means are small at first, the ascending scale of premiums is best adapted. As they grow older and possess greater means, they are better enabled to meet the increasing instalments. Whereas to those who are advanced in life, the descending or terminable scale is best adapted, their burden growing lighter, or ceasing entirely, as they approach a period when they naturally are less fitted to provide against the payments as they fall due.

It was for the benefit of persons of small means, as hitherto stated, that these institutions were originally founded, and this feature has remained unchanged. To those whose means are ample, it can not be said to possess great advantages, as persons in such a situation can provide for their families and invest their means, full as well for themselves, as the assurers can for them, without at the same time subjecting themselves to the expense. Riches are fleeting, however, and we see the most wealthy often become poor. How prudent then is it, even for one of large property, to invest a small portion thereof in a life policy, and thus guard against the consequences of such an untoward event.

Although persons are continually dying, yet few expect they will soon be called, and therefore are little inclined, by a present sacrifice, to provide against an evil which, though they know to be certain, they yet suppose to be distant. The benefits to be derived from life assurance are, however, becoming daily better appreciated; and the fair dealing and prompt

payment made by companies, even on losses for which they might not be legally liable, has begun to inspire confidence in their system and practice.

CHAPTER III.

OF THE INTEREST IN THE LIFE INSURED.

1. Origin and object of the rule requiring interest.
2. Nature and extent of the interest required.
3. Of the interest in one's own life.
4. Of the interest in the lives of one's relations or friends.
5. Of the interest of a creditor in the life of his debtor.
6. Of the interest of a trustee in the life of his *cestui que trust*.
7. Of the interest of the grantee of an annuity in the life or lives on which his annuity depends.

1. *Origin and Object of the Rule requiring Interest.*

Previous to the passage of the statute 14 George III, chapter 48, it was common for parties to effect insurances on lives in which they had no interest. This, it will readily be perceived, not only led to great frauds, and was a cover for wagering, but also tended to be productive of serious consequences to the innocent parties who may have, perhaps unknow-

ingly, been selected as the subject of such insurances, in holding out the temptation to make way with such lives.

In view of the evils consequent upon this custom, it was enacted, by that statute, that "no insurance shall be made by any person or persons, bodies politic or corporate, on the life or lives of any person or persons, or any other event or events whatsoever, wherein the person or persons for whose use or benefit, or on whose account, such policy or policies shall be made, shall have no interest, or by way of gaming or wagering; and that every insurance, made contrary to the true intent and meaning of this act, shall be null and void, to all intents and purposes whatsoever."

In this country, though no direct statutes may have been passed on this subject, yet wager contracts are, almost universally, held to be unlawful.

In most of the states, statutes have been enacted against gaming and wagering,[a] which would require no very strained construction to

[a] New York Revised Statutes, vol. 1, p. 662.

apply to this contract, and, where no such statutes have been passed, they would probably be held to be unlawful, on the principles of the common law, and as being against public policy.

In Lord vs. Dall, 12 Mass. R., 115, Parker, C. J., uses this language: "It is said that, being a contract of assurance, the law on the subject of marine insurance is applicable to it; and, therefore, unless the assured had an interest in the subject matter insured, he is not entitled to his action. This position we agree to; for otherwise it would be contrary to the general policy of our laws, and therefore void."

2. *Nature and Extent of the Interest required.*

The interest in the life must be a pecuniary interest. This is the only interest capable of being legally ascertained. This was impliedly admitted in the case of Innes vs. Equitable Assurance Company,[b] and was directly decided

[b] This was a case at *nisi prius*, and not reported. The plaintiff insured the life of his daughter, with the defendants; and to make it appear that he had a pecuniary interest in her life, he

in the cases of Halford vs. Kymer,[c] and Lord vs. Dall.[d]

In Valton and Adams vs. The National Loan Fund Life Assurance Society, three persons, Valton, Martin and Schoonmaker, entered into a copartnership, to carry on the liquor business. Schoonmaker understood the business, and, as against the capital of Valton and Martin, was to put in his skill. Schoonmaker insured his life for ten thousand dollars, and, by the articles of copartnership, in case of his death without children, or unmarried, his partners, Valton and Martin, were to receive the sum

produced a document purporting to be a will, under which he became entitled to a sum of £1000 in the event of her dying under twenty-one. The will was proved to be a forgery; Innes convicted and executed, and the three pretended attesting witnesses convicted of perjury, imprisoned and pilloried. That case, therefore, impliedly admitted, that a pecuniary interest only was insurable under the statute; since, otherwise, there could have been no necessity for setting up the pretended will. For fuller report, see *Lond. Law Mag.*, vol. iv, p. 373, where, also, is to be found a long article on the same subject.

[c] 10 Barn. & Cres., 724.

[d] 12 Mass. Rep., 115.

secured by the policy. Schoonmaker shortly afterwards died, unmarried; Martin assigned his interest to Adams, and Valton and Adams brought suit to recover the insurance. The defendants moved for a nonsuit, on the ground that, the plaintiffs having no interest in the life of Schoonmaker, the policy was a wager policy, and therefore void.

The plaintiffs insisted, that they had an insurable interest in the life of Schoonmaker; that, as he was to contribute only his skill, they had an interest in his life, not to be deprived of it, and thus of his skill and services. The court held, that they had an insurable interest, and the policy not void for want of interest.[e]

As to the extent of interest required, in the third section of the same act, it is enacted, that in all cases where the insured hath an interest in such life or lives, event or events, no greater sum shall be recovered or received from the in-

[e] Valton and Adams vs. The National Loan Fund Life Assurance Society, tried at the Albany Circuit, Wright, J., Nov., 1852. The case is now being carried up to the general term.

surer or insurers, than the amount or value of the interest of the insured, in such life or lives, or other event or events. It may, therefore, be inferred, that an insurance beyond the amount of interest, would not invalidate the whole contract, but would be void only as to the excess. The same rule would probably be held in this country, on the ground, that, as to the amount of the insurance, above the interest the party had in the life insured, it would be a wager contract, and therefore void; for, to the extent of the excess, it would tend to give rise to the evils already named.

This construction of the contract, which would limit the recovery to the interest in the life assured, is in analogy with the equitable principles, which apply to the construction of penalties in bonds and other instruments, where the amount inserted by way of penalty is intended to secure only a lesser sum. The policy ceases with the interest. Therefore, where a person insures the life of another, he will not be entitled to receive the amount, if the risk intended to be insured against ceased at the

death of the party whose life was insured. But if the party had an insurable interest, the court will refer the policy to that interest, although it contains no express reference to that interest, and although there is no extrinsic evidence to show that it had reference to that particular transaction.

Thus where a debtor and his wife joined in an assignment of the chose in action of the wife to a creditor of the husband, to secure a debt owing by the husband, and the chose in action was not reduced into possession in the life time of the wife, and the creditor insured the life of the wife, and on her death, which was before that of her husband, the creditor received the amount of the insurance from the office; on an action[f] being brought by the debtor for the redemption of the mortgaged property, and to have the amount received of the insurance office set off against his debt, the Vice Chancellor gave the following opinion: that if the policy was void from the beginning, the plaintiff could claim nothing; that the creditor

[f] Henson vs. Blackwell, 4 Hare, 434.

had an insurable interest, but his right was only to effect a policy, which should guaranty him against the loss which he might have sustained, if the wife had survived the husband—she did not survive her husband, consequently the risk intended to be guarded against was at an end, and when the risk ceased, the guaranty must be considered as satisfied: also "if then the defendant had (as I think he had), an insurable interest, there was an interest to which the court might, and, I think, ought, to refer the policy, although the policy itself contains no express reference to that interest; and although there is no extrinsic evidence to show that it had reference to this particular transaction."

3. *Of the Interest in one's own Life.*

Every one has an interest in his own life, and in every part of it, and can effect an insurance for its whole duration, or for a limited period.

Accordingly, it has been held, that an executor suing on a policy effected by his testator,

on two years of his life, is not bound to show that such testator had any special reason for making such limited assurance.[g] So likewise there is no limit to the amount for which a person can insure his own life; and though a person may not have the means to pay the premiums, another may lend him the amount, and the policy still continue his own, and be valid. But where one person, having no interest in the life of another, induced the latter to effect an insurance in his own name, the former finding the funds for the premiums, and intending by assignment or otherwise to get the benefit of the policy himself, so that it is substantially his policy, and not of the one named as the assured in the policy, such policy is void.

Thus, in Wainwright vs. Bland,[h] where the assured, an orphan about twenty-one years of age, residing in the house of the plaintiff, a near relation, effected policies on her life for two and three years, to the amount of £16,000, and had not property of any kind sufficient to meet the

[g] Wainwright vs Bland, 1 Moody & Rob., 481.

[h] 1 Moody & Rob., 481.

premiums, which exceeded £200; and no evidence being given to show that it was desirable for her to effect policies to so large an amount, and the money with which the premiums were paid having been traced to the plaintiff: it was held, that although the assured might not have had the money to meet the premiums, yet that the plaintiff might have lent her the amount, and the policy still continue her own. But if the policy was really effected by the plaintiff, he merely using her name and finding the funds, and meaning by way of assignment, bequest, or otherwise, to have the benefit of it himself, such a transaction would be a fraudulent evasion of the statute, and void. And upon this ruling, it was left to the jury upon the facts to decide, whether it was the policy of the assured, or in effect of the plaintiff, he furnishing the funds and merely using the name of the assured. They found it was the policy of the plaintiff. It was afterwards moved for a rule to show cause why the verdict should not be set aside, and a new trial granted, on the ground of misdirection by the learned judge. The rule was

refused but no opinion given by the court, whether the policy was void as being against or in evasion of the statute.[1]

4. *Of the Interest in the Lives of one's Relations or Friends.*

A father can not insure the life of his child, or one relation or friend the life of another; unless the party has some pecuniary interest in such life, or would suffer some pecuniary loss by the death of such relation or friend. This is the only safe rule. If persons could insure the lives of their relations and friends, merely on the ground of friendship, or the sorrow experienced on their loss, it would tend to all the evils of wager policies, and be the more dangerous because persons, united by these ties, are naturally thrown off their guard, and much more exposed to the fraudulent designs of those who are inclined to take advantage of such a situation; and the guilty party is more likely to escape detection, for the apparent friendship tends to ward off suspicion. There-

[1] Wainwright vs. Bland, 1 Mees. & Wels., 32.

fore, where a father had insured the life of his son in which he had no pecuniary interest, it was held that he was not entitled to recover; and it being stated that the offices were in the habit of taking such assurances, Lord Tenterden said, that, "if a notion prevailed that such insurances were valid, the sooner it was corrected, the better."[j]

Mr. Ellis states, that the offices in England are in the custom of paying upon policies, without regard to interest; and that so general has this custom become, that, in a case[k] where the executor of a party who had purchased a policy, in which the interest had or was about to expire, brought an action to recover back the purchase money, the court admitted evidence of such custom, and held, that although the defendant had no interest, in point of law, and the payment of the policy could not be enforced; yet, though the law would not enforce such payment, there may be reasonable expectation that it would be paid; and, therefore, if there

[j] Halford vs. Kymer, 10 Barn. and Cres., 724.

[k] Barber vs. Morris, 1 Moody and Rob., 62.

was no improper concealment of facts, or fraud, to vitiate the sale, the purchaser could not recover.[l]

It has been held, however, that a wife insuring the life of her husband, need not prove her interest in his life; for in Reed vs. Royal Exchange Assurance Company,[m] when the plaintiff's counsel were proceeding to prove that Reed was entitled to the interest of a large sum of money, which went from him at his death, and therefore, that the plaintiff was interested in his life, Lord Kenyon said; it was not necessary, as it must be presumed that every wife had an interest in the life of her husband.[n] So also a single woman, dependent on her brother for support and education, has a sufficient interest in his life to entitle her to insure.[o]

[l] The motives of policy which, at one time, induce an office to pay such losses, may not exist at another, and as they are not legally bound to pay them, it behooves persons not to rely too strongly on such custom.

[m] Peake's additional cases, p. 70.

[n] *Quere*—Whether such presumption is rebutted by proof, that the husband was supported entirely by the labor or income of the wife; and whether in such cases she has any pecuniary interest.

[o] Lord *vs.* Dall, 12 Mass. R., 115.

In New York a special statute[p] has been passed on this subject; thus it is enacted, that "it shall be lawful for any married woman by herself, and in her name, or in the name of any third person, with his assent, as her trustee, to cause to be insured, for her sole use, the life of her husband, for any definite period, or for the term of his natural life; and in case of her surviving her husband, the sum or nett amount of the insurance becoming due and payable, by the terms of the insurance, shall be payable to her, to and for her own use, free from the claims of the representatives of her husband, or of any of his creditors; but such exemption shall not apply, where the amount of premium annually paid shall exceed three hundred dollars. In case of the death of the wife, before the decease of her hubsand, the amount of the insurance may be made payable, after her death, to her children, for their use, and to their guardian if under age." In Vermont, a statute[q] has been enacted, which is a literal

[p] Session Laws of 1840, p. 59.

[q] Laws of Vermont, 1849, p. 17, 18.

transcript of the one in New York, with an additional clause, allowing unmarried women to insure the lives of their fathers or brothers, to the same extent. A law of similar character has been passed in Rhode Island.[r]

These statutes, so far as regards the interest, can not be considered as extending the right of effecting assurances; but merely as doing away with proof of the pecuniary interest, in the assurances authorized by such statutes; for an insurance by one relation or friend of the life of another, where the person for whose benefit the assurance is effected, is supported by the person whose life is the subject of the assurance, would be legal. In all such cases, however, not coming under the statute, it would be necessary to prove the pecuniary interest; i. e., that they were supported by the person whose life is the subject of the assurance.

An assurance, also, in such cases, would not be valid beyond the amount of pecuniary aid received; whereas, in the cases provided for by statute, the assurance would be valid to the

[r] Laws of Rhode Island, 1848.

extent allowed, although the aid received might be less than the amount of the assurance effected.

5. *Of the Interest of a Creditor in the Life of his Debtor.*

The interest which a creditor has in the life of his debtor is sufficient to entitle him to insure, but it extends only to the amount of his debt.

The insurance of a debtor's life by a creditor, is in the nature of an indemnity; and if the debt is paid, or if the debtor dies insolvent, but the debt is paid aliunde, the creditor can not recover the amount of the insurer.

In Stackpole vs. Simon,[s] the insurance was a debt due from the insured to the plaintiff; and Lord Mansfield held, "as to the interest, this policy may be considered as a collateral security for the debt due to the plaintiff." In Anderson vs. Edie,[t] the only question was as to

[s] Stackpole vs. Simon, Sitt. at Guild. Hil. Vac., 1779, Park, 2 vol., p. 932, 8th ed.

[t] Park, 8th ed., vol. 2, p. 914.

the interest—and a debt being shown to support it—Lord Kenyon held, that a creditor had certainly an interest in the life of his debtor; the means by which he was to be satisfied may materially depend upon it; and at all events the death must in some degree lessen the security.

In Godsall vs. Boldero,[u] the facts were, briefly, that the Right Hon. William Pitt being indebted to the plaintiffs, they obtained an insurance on his life for one year, renewable from year to year for seven years: the policy was duly renewed and the premium paid each year. Mr. Pitt died insolvent during the time of the insurance, but the debt was fully paid to the plaintiffs, by the executors of Mr. Pitt, out of the amount granted by parliament for that purpose. The counsel for the plaintiffs contended that they were entitled to recover upon this policy, notwithstanding the payment of the debt to them by Mr. Pitt's executors out of the money granted by parliament for that purpose. That a creditor had an insurable interest in the life of his debtor, and the amount of the debt is the

[u] Godsall vs. Boldero, 9 East. 72.

measure of that interest; and so far the existence and legality of the debt is necessary to the validity of the insurance in point of interest under the statute, 14 Geo. 3 c. 48; but that it is not the debt *qua debt*, which is insured, but the life of the debtor; it is only necessary that the interest should exist at the time of the insurance made, and continue up to the time of the death of the debtor, as it did in this case; and the sum insured having then become due, and the debtor's estate insolvent, the fact of payment of the debt afterwards by a third party, can not be material: such payment being altogether gratuitous.

Lord Kenyon held, in substance: that the insurance in question was in the nature of a contract of indemnity, as distinguished from a contract by way of gaming and wagering; the interest which the plaintiffs had in the life of Mr. Pitt, was that of creditors, a description of interest which had been held not to be within the prohibition of the statute. That interest depended upon the life of Mr. Pitt, in respect of the means and the probability of payment

which the continuance of his life afforded to such creditors, and the probability of loss which resulted from his death. The event against which the indemnity was sought by this assurance, was, substantially, the expected consequence of his death, as affecting the interests of these individuals assured, in the loss of their debt. This action is, in point of law, founded upon a supposed damnification of the plaintiffs, occasioned by his death, existing and continuing to exist at the time of the action brought; and being so founded, it follows, of course, that if, before the action was brought, the damage which was at first supposed likely to result to the creditors from the death of Mr. Pitt, was wholly obviated and prevented by the payment of his debt to them, the foundation of any action on their part, on the ground of such insurance, fails. And it is no objection to this answer, that the fund out of which their debt was paid, did not (as was the case in the present instance) originally belong to the executors, as a part of the assets of the deceased: for, though

it were derived to them aliunde, the debt of the testator was equally satisfied by them thereout; and the damnification of the creditors, in respect of which their action upon the assurance contract is alone maintainable, was fully obviated before their action was brought.[v]

If a person indebted to another die, and a third person agrees to pay the debt by installments, in a certain time, the party to be benefited has an insurable interest in the life of such third person for that time.

[v] In the *London Law Magazine*, of 1848, vol. viii, new series, there is a long article on this subject; in speaking of this case, the writer thinks "that the court erred in treating the contract as in the nature of an indemnity; that the consequences of considering it in this light are most serious, for a contract of indemnity against loss implies as a condition precedent to any recovery upon it, that a loss should be proved to have been sustained, and that if this case is right in principle the offices would have a right to insist that the creditor should pursue all his remedies against the debtor's estate, before resorting to the policy, and that then, and not before, would they be bound to pay."

The principle of this decision has, however, been recognized in the subsequent cases of Bainbridge vs. Neilson, 10East, 344, and Tunno vs. Edwards, 12 East, 493.

Thus in Von Lindenau vs. Desborough,[w] where the plaintiff, as the director of a bank, to which Augustus, Duke of Saxe Gotha, at his decease, was indebted in a large amount, insured for five years the life of Duke Frederick the Fourth, who, soon after his accession, had entered into a treaty with the private creditors of Duke Augustus, by which he agreed to pay them their debts in half yearly installments, so that the whole would be discharged in five years, and this treaty was signed, by the plaintiff, in behalf of the bank; on the objection being raised, by the defendant's counsel, that the plaintiff had no insurable interest, Lord Tenterden, C. J., said, that such being the facts, the plaintiff had an insurable interest.

So, also, where one person guaranties the debt of another, the person to be benefited has probably an insurable interest in the life of such guarantor, and can either insure the life of the debtor himself, or of the one who has guarantied the payment of such debt.

A person holding a note for money won at

[w] 3 Car. & Payne, 353.

play, has not an insurable interest in the life of the maker of it. This was decided in the case of Dwyer vs. Edie;[x] the defendants also raised another objection; that at the time of giving the note, the maker of it was an infant. On this point Mr. Justice Buller remarked, "that as to the objection on account of infancy, the interest must be contingent, for the party might or might not avoid his note; and he doubted much whether, till so avoided, the note must not be taken against a third person, to be the note of an adult, for the maker of the note only could take the objection."

6. *Of the Interest of a Trustee in the Life of his Cestui que Trust.*

An executor in trust has a sufficient interest to enable him to make assurance in his own name, on the life of a person who has granted an annuity to the testator. Thus where an action[y] was brought on a policy of insurance,

[x] Dwyer vs. Edie, sitt. at Lond. after Hil. 1788, Park, 8th ed., vol. ii, p. 913

[y] Tidswell vs. Ankerstein, Peake's Cases, 151.

on the life of Wm. Holden, late Shuttleworth, from the 17th August, 1790, to the 17th August, 1791, both days inclusive, and during the life of the plaintiff; but in case the plaintiff should depart this life before Wm. Holden, the policy to be void. Holden had granted an annuity to the plaintiff's late brother, which annuity he had bequeathed to persons not parties to this insurance, having made the plaintiff executor of his will, and directed him to make assurance. The defendant's counsel objected that the plaintiff had not such an interest as enabled him to insure this life; the real interest being in the persons to whom the annuity is bequeathed; and the act 14 Geo. III, ch. 48, directs, that all insurances shall be made for the benefit of the person interested. That here the insurance was made by a person having no beneficial interest, and that had the plaintiff died before the person whose life is insured, the insurance would have been gone. Lord Kenyon held, however, that this was a sufficient interest to support the action; for the plaintiff could not assent to the legacy, before the test-

ator's debts were paid, without being guilty of a devastavit, and being executor, all the interest of the testator vests in him.

7. *Of the Interest of the Grantee of an Annuity in the Life or Lives on which his Annuity depends.*

Where one grants an annuity to another, depending on one or more lives, the grantee has an interest in such life or lives; and may effect an insurance equal to the value of the annuity; and a contract by the grantor, to effect such insurance for the benefit of the grantee, is not usurious.

Thus,[z] where the grant of an annuity for the term of four lives, and the lives and life of the survivors and survivor, contained a covenant by the grantor, within thirty days, after the decease of the third life which should drop, to insure £1000 (the amount of the consideration), in some insurance office, for the use of the grantee, to be paid on the decease of such survivor: Held, not usurious.

[z] Holland vs. Pelham, 1 Cramp and Jervis R., 575.

CHAPTER IV.

OF THE COMMENCEMENT AND DURATION OF THE RISK.

1. Of the usual time of its commencement, and of the true rule for determining it.

2. Of the clauses "from the date," and "from the day of the date."

3. The death must happen within the time limited in the policy.

4. Whether the death happened within the time limited, is a question for the jury.

5. As to presumptions of death.

6. Presumptions of survivorship.

7. The risk may terminate before the time limited.

1. *Of the usual Time of its Commencement, and of the true Rule for determining it.*

The risk is usually considered as commencing, from the signing and delivery of the policy, and the payment of the premium; still, it may commence before the performance of all or either of the above acts; and, therefore, the only true rule is, that it commences whenever

it can be shown, by the acts of the parties, that it was their intention and understanding that it should.

Although a policy may be of great importance, to prove the agreement and show the date of its commencement; but that it is not an essential requisite to its validity, and that the insurer may be bound before the execution of it, may be seen in the case of Tayloe v. The Merchants' Fire Insurance Company.[a] In that case, there was a correspondence between the parties; the insurers making known, by mail, the terms on which they would insure, and the insured sending the premium required, and his acceptance of the terms, also by mail. It was held by the Supreme Court of the United States, that the contract was complete, on the insured depositing in the mail a letter accepting the terms, and enclosing the premium, although the letter of acceptance did not reach the insurers till after a loss had occurred, and consequently no policy had been made out. Because, say the court, "on the

[a] 7 Howard's R., 390.

acceptance of the terms proposed, transmitted by due course of mail to the company, the minds of both parties have met on the subject, in the mode contemplated at the time of entering upon the negotiation, and the contract becomes complete." "It is obviously impossible, therefore, under the circumstances stated, ever to perfect a contract by correspondence, if a knowledge of both parties, at the moment they become bound, is an essential element in making out the obligation; and as it must take effect, if effect is given at all to an endeavor to enter into a contract by correspondence, in the absence of the knowledge of one of the parties, at the time of its consummation, it seems to us more consistent with the acts and declarations of the parties, to consider it complete on the transmission of the acceptance of the offer in the way they themselves contemplated; instead of postponing its completion, till notice of such acceptance has been received and assented to by the company." However, as the risk is generally considered as dating from the execu-

tion of the policy, and as that is the usual and most ostensible method for the parties to show their intentions, on a loss occurring before its execution, it would lie on the party claiming the amount to prove that it was the intention of the assurers that the risk should commence before its execution.

The risk may commence before the payment of the premium; for though the insurers may demand the premium before delivering the policy, still if they do deliver it, without receiving the premium, it will be presumed that they gave credit for it, and will be liable equally as if it had been paid. But if in the policy, so delivered, there is a clause that it is not to take effect till the premium is paid, then it must be presumed that it was only a conditional delivery, and that the insured received it with that restriction, which is as important, and as much to be observed, for the validity of the contract, as any of the other clauses therein contained.

2. *Of the Clauses, "From the Date," and "From the Day of the Date."*

There was, at one time, considerable division among the lawyers, with regard to the interpretation of the terms, "from the date," and, "from the day of the date." And there once arose a case, on a life policy, where the construction of this clause, as relating to the commencement of the risk, was of great importance; for the change of a single day released the insurer from liability. In that case,[b] which was an action upon a policy of insurance, for insuring the life of Sir Robert Howard for one year from the day of the date, the policy was dated the 3d September, 1697; Sir Robert died the 3d September, 1698, at one o'clock in the morning. It was decided by Chief Justice Holt, that "from the day of the date" excludes the day; but "from the date" includes it; and, therefore, the day of the date being excluded, in this case, the insurer was held liable.

[b] 1 Lord Raym. 480.

But in Pugh vs. Duke of Leeds,[c] it was decided that, "from the day of the date" may mean either inclusive or exclusive, according to the context and subject matter; and the court will construe it so as to effectuate the deeds of parties and not destroy them.

This difficulty is, however, now, generally avoided, by the company's naming and including the first and last days.

3. *The Death must happen within the Time limited in the Policy.*

The risk continues during the time limited in the policy, and terminates at the period there stated; and, to render the insurers liable, the death, itself, must take place within that time. For the principle in marine insurance, that the loss must happen within the time limited in the policy, is also applicable to life insurance. Thus, if the insured receive a mortal wound before the expiration of the time limited in the

[c] Cowper, 714.

policy, but dies after that time, the insurer would not be liable.[d]

4. *The Time of the Death is a Question for the Jury.*

The risk ceases when the policy expires; but sometimes it may be a question, whether a person is dead, or the death happened during the time limited in the policy. This is a question of fact, to be determined by the jury.

Thus, an insurance was made on the life of L. Macleane, Esq., from the 30th of January, 1772, to the 30th of January, 1778. In an action, on the policy, it appeared that about the 28th day of November, 1777, he sailed from the Cape of Good Hope, in the Swallow sloop of war; which ship, not being afterwards heard of, was supposed to have been lost in a storm off the Western Islands. The question was, whether Macleane died before the 30th of January, 1778. To establish the affirmative of that question, the plaintiff called witnesses to prove the ship's departure from the Cape, with

[d] Per Willes, J., in delivering the opinion of the court, in the case of Lockyer vs. Offley, 1 T. R. 260.

Macleane; and several captains swore that they sailed the same day; that the Swallow must have been as forward in her course as they were, on the 13th or 14th of January, the period of a most violent storm, in which she, probably, was lost; and that the Swallow was much smaller than their vessels, which with difficulty weathered the storm. Lord Mansfield, who tried the cause, left it to the jury to say, whether, under all the circumstances, they thought the evidence sufficient to convince them that Macleane died before the time limited in the policy; adding, that if they thought it so doubtful as not to be able to form an opinion, the defendants ought to have their verdict. The jury found for the plaintiffs.[e]

5. *Presumptions of Death and Survivorship.*

Presumptions of death are founded on the experience we have, of the natural continuance and duration of life.

A person once shown to be alive, is presumed to continue to exist, and the burden of proving

[e] Patterson vs. Black, at N. P. Hil. Vac. 1780.

his death, lies on the party seeking to establish it; but after proof of a certain lapse of time, without information being had of the person, a contrary presumption arises, and the person will be held to be dead, and the burden of proof will be thrown on the other party to show that such person is alive.[f] This presumption, and the period of time without knowledge of the person, which must elapse, before it will be deemed to have arisen, has, in certain cases, been declared by statute; thus, in New York, it has been enacted: "If any person, upon whose life any estate in lands or tenements shall depend, shall remain beyond sea, or shall absent himself in this state, or elsewhere, for seven years together, such person shall be accounted naturally dead, in any action concerning such lands or tenements in which his death shall come in question, unless sufficient proof be made, in such case, of the life of such person.[g]

[f] Loring vs. Steineman, 1 Met. 204. See, also, Smith vs. Knowlton, 11. N. Hamp. R. 191.

[g] 2. N. Y. Rev. Stat. 34, § 6. See Laws of New Jersey, by Patterson, p. 241.

From analogy, the same presumption and the same period of time, which must elapse, without the person being heard of, before such presumption will arise, has been extended to cases not included in, or embraced by, the statute.[h] And, although we have, as yet, no adjudications on this subject, arising under life policies, there seems good ground for the opinion, that the same presumption would also, from analogy, be applied to them.

In Tilly vs. Tilly,[i] Chancellor Bland, of Maryland, says: "the general rule is, that any one who has not been heard of, for the space of seven years, may, for all legal and equitable purposes, be presumed to be dead." And in New York, it has been held, that where a person sailed from New York in a vessel, on a voyage to South America, and neither he nor the vessel had ever been heard of since, a period of twelve years, that the circumstances of the case, furnished an irresistible presumption, from analogy to the statute of bigamy and

[h] King vs. Paddock, 18 Johns. R. 141.

[i] 2 Bland's R. 445.

the statute concerning leases determinable upon lives, that he was dead.[j]

If this view is correct, there may be many cases, where, there being no evidence to be submitted to the jury, either as to whether a person is dead, or as to the period of his death, except as to lapse of time, and that he has not been heard from, the introduction of this principle may be of great importance, in enabling the person, entitled to the benefit of the assurance, to obtain the amount secured by the policy; when otherwise the fact of such death could not be established.

The following cases seem to warrant the general conclusion, that, when a person has been absent, beyond sea, seven years, without being heard of, there arises a legal presumption, that such person is dead.[k]

There is no presumption, however, as to the

[j] King vs. Paddock, 18 Johns., 141.

[k] Loring vs. Steineman, 1 Met., 204. Newman vs. Jenkins, 10 Pick., 515. Burr vs. Sim., 4 Whart., 150. Brakley vs. Bradley, 4 Whart., 173. Cafer vs. Thurmond, 1 Kelly, 538.

time of his death,[l] or even that he died on the last day.[m] The fact of a person having been alive or dead at a particular period, during the seven years, must be proved by the party relying on it,[n] and the death is not generally presumed to have occurred until the expiration of the time,[o] but the presumption is that the person has lived throughout the seven years from the time of last hearing, and then to have died.[p] The jury may also find, that a person is dead, although a period of seven years, since he was last heard of, has not expired, on circumstantial evidence which leads them to such conclusion.[q].

When a person has fixed his domicil abroad, although he may not have been heard of at the place of his birth, or his original residence, for more than seven years, the presumption of his

[l] Nepean vs. Doe, 2 Mees & Wels., 894. (McCartee vs. Camel, 1 Barb. Ch. R, 455.)

[m] McCartee vs. Camel, 1 Barb. Ch. R., 455.

[n] Doe vs. Nepean, 5 Barn. & Adol., 86.

[o] Smith vs. Knowlton, 11 N. Hamp., 191.

[p] Burr v. Sim, 4 Whart., 150; Bradley v. Bradley, 4 Whart., 173.

[q] Smith vs. Knowlton, 11 N. Hamp., 191.

death will not arise, unless some evidence is furnished of inquiry for him, without success, at his last known place of residence.[r] The law presumes the residence to continue in a place, where it is known to have been, at any time, until the contrary is shown.[s]

Where the person whose death is to be presumed, was, in fact, within the United States, and not technically abroad, beyond sea, absenting himself in this state, or elsewhere (2 Rev. Stat. of N. Y., 34, § 36), must mean absenting himself from his last place of residence in this state, or in the United States, which was known to his family, or to those of his relatives, who would be likely to know where he was living.[t]

6. *Presumptions of Survivorship.*

By the civil law, where two persons perished by the same disaster, and there was no evidence as to which died first, it was presumed

[r] McCartee vs. Camel, 1 Barb. Ch. R., 455.

[s] Prather vs. Palmer, 4 Pike, 456.

[t] McCartee vs. Camel, 1 Barb. Ch. R., 455.

that in a case where both father and son perished by the same calamity, and the son was under the age of puberty, that the father survived, but that if above that age the son survived, upon the principle that, in the one case, the father is usually the most robust, and, in the other, the son.[u] By the Code Napoleon,[v] it is provided, that where several persons perish by one and the same accident, so that it is not possible to ascertain which of them died first, the presumption, as to survivorship, is to be determined by the circumstances of the event, and in the absence of all such evidence, by the age and sex of the persons. If those who perished together were under fifteen years, the eldest shall be presumed to have survived. If some were under fifteen years and others more than sixty, the former shall be presumed to have survived. If those who perished together were of the age of fifteen years complete, but less than sixty, the male is always presumed to have survived, where there is equality of

[u] 1 Greenleaf's Ev., § 29.

[v] Book iii, tit. 1, c. 1, art's 720, 721, 722.

age, or the difference which exists does not exceed one year. If they were of the same sex, the presumption of survivorship which gives rise to succession, according to the order of nature, must be admitted; thus the younger is presumed to have survived the elder."

No such presumptions appear to have been adopted by the common law.

In Selwyn's case,[w] where husband and wife perished at sea, and no circumstances were known, showing any advantages on the part of either, the court said: "In the absence of clear evidence, it has generally been taken, that both died at the same moment." In Coye vs. Leach,[x] where a father, seventy years old, and his daughter, thirty-three years old, being on board a steam boat, that was lost at sea, and both perished by the calamity, and no special circumstances were known, tending to show that one died before the other, it was held, that it must be presumed that both died at the same instant.

[w] 3 Hagg Eccl. R., 748. See, also, Mason vs. Mason, 1 Meriv., 308, and Taylor vs. Diplock, 2 Phillim, Rep., 261.

[x] 8 Metc., 371.

In Moehring vs. Mitchell,[y] where a mother and daughter perished at sea, and there was no evidence to authorise a different conclusion, it was presumed they died together.

In Silliek vs. Booth,[z] it was held that where two persons die by the same accident and no special circumstances in evidence, from which it may be presumed that one died before the other, the law of England will draw that presumption from general circumstances, such as the comparative health, strength, age or experience of the parties.

Where a man and his wife perished at sea, on board of a steam boat, by the explosion of the boilers, which caused the vessel to sink in about half an hour, and there was evidence that the wife was heard to call loudly for her husband immediately after the disaster, and that he was not heard to answer, nor was heard, or seen, at any time, after the explosion, it was held that the wife survived; that such general considerations, as age, health, &c., may be

[y] 1 Barb. Ch. R., 264.

[z] 1 Younge & Coll. Ch. R., 121.

resorted to, to aid conjecture, but that where there is any evidence, even the slightest, it must govern the decision of the fact.[aa]

The weight of authority appears to be, therefore, that, where two persons perish by the same disaster, and there is no evidence as to who, actually, died first; they will be presumed to have died together; but where there is any evidence tending to show who died first, this must govern the case; that in case of great inequality in the age and health of the persons, these circumstances may be taken into consideration in aid of conjecture.

7. *The Risk may terminate before the Time limited.*

Where the insurance is effected for a number of years or for life, and the premium, as is usually the case, is not paid at the time required by the policy, the risk ceases. Thus, upon a policy of insurance on the life of A, the premium became due on the 15th of March, but was not paid until the 12th of April, when

[aa] Pell vs. Ball's Ex'rs, Cheve's Eq. R., 99.

the country agent of the Insurance Company, through whom the insurance had been effected, gave a receipt for the amount of the premium. The instructions given by the company to the agent were, that the premium on every life policy must be received within fifteen days from the time of its becoming due; if not paid within that time, he was to give immediate notice to the office of that fact, and in the event of his omitting to do so, that his account would be debited for the amount, after the fifteen days had expired. No notice was given to the company of the nonpayment of the premium within the fifteen days; it was, therefore, entered in their books as paid on the 15th of March, and the agent was debited for the amount. Held, first, that the mere debiting the agent with the premium, could not be considered as a payment to the company by the assured. Secondly, that as the agent had no authority to contract for the company, the fact of his receiving money after the expiration of the fifteen days, and the entry in the company's books, debiting him with the amount, were no evidence of a new

a new agreement between the company and the assured.[bb]

Where, in a policy for life or years, there is a clause that the policy is to cease unless the premium is paid within a certain time, the insured dying within the period, but without paying the premium, a tender of the sum by his executor, though within the time limited, will not be a compliance with the clause in the policy. Thus, where one as a member of a life assurance society, for the benefit of widows and female relations, entered into a policy of assurance with the society for a certain annuity to his widow after his death, in consideration of a quarterly premium to be paid to the society during his life, and the society covenanted to him and his executors, &c., that if he should pay to their clerk the quarterly premiums on the quarter days during his life, and if he should also pay his proportion of contributions, which the members of the society should, during his life, be called on to make, in order to supply any deficiencies in their funds; then, on

[bb] Acey vs. Fernie, 7 Mees & Welsby 151.

due proof of his death, the society engaged to pay the annuity to his widow, and by the rules of the society if any member neglected to pay up the quarterly premiums for fifteen days after they were due, the policy was declared to be void, unless the member (continuing in as good health as when the policy expired), paid up the arrears within six months and five shillings pe month extra; held that a member insuring, having died leaving a quarterly payment over due at the time of his death, the policy expired, and that a tender of the sum by the member's executor, though made within fifteen days after it became due, did not satisfy the requisition of the policy and the rules of the society, which required such payment to be made by the member in his life time, continuing in as good health as when the policy expired.[cc]

As an insurance for life or a number of years is taken at a less premium per year than if the insurance was effected each single year, for the premium increases with each succeeding

[cc] Want vs. Blunt, 12 East, 183.

year, it follows that one who is insured for years or life by permitting the time of his yearly payment to run by, loses the benefit of the former low rate, and as the policy expires and the risk ceases on his neglect to pay, and he can not, by afterwards tendering the amount, require the insurer to put him in his former condition, it follows, that if he wishes to be insured the following year, he may be compelled to pay an increased rate for the new policy.

CHAPTER V.

OF WARRANTY.

1. *Of Warranty in General and its Effect.*

A warranty is a stipulation inserted in writing on the face of the policy or on a paper referred to therein, on the literal truth or fulfilment of

which the validity of the entire contract depends.

The law in regard to warranty is very strict, and the least breach of one, however unimportant, releases the assurer from all liability; for it is a well settled principle of insurance law, that when a thing is warranted to be of a particular nature or description, it must be exactly what it is stated to be, and it makes no difference whether the thing be material or not: this principle has been followed in all the English and American cases.[a]

Therefore, should the assured die from some other cause, not in the least connected with the breach of the warranty, yet the assurer is none the less discharged. It therefore becomes of the utmost importance to both parties to know what declarations on the part of the assured are to be construed as warranties, so as to apply to such declarations the strict construction and severe effect incident to a warranty.

[a] The New Castle Fire Insurance Company vs. Macmorran, 3 Dows R., 255. Burritt vs. The Saratoga County Mutual Fire Insurance Company, 5 Hill, 188. Trench and another vs. The

2. *Distinction between a Representation and a Warranty.*

The distinction between a representation and a warranty, is, that the former is a declaration, merely collateral to the contract, while the latter is in the nature of a condition precedent.[b]

A representation, although untrue, must be material to have the effect of avoiding the contract, but a warranty must be strictly true and complied with.[c]

If a representation be proved or admitted to be untrue, evidence is still admissible to show that it was immaterial. A fact warranted, when proved to be untrue, precludes further evidence, the assurer being entitled to say, that is not my contract.

3. *Of the Form of a Warranty.*

No particular form of words is necessary to constitute a warranty. The words warranty, or

Chenango County Mutual Insurance Company, 7 Hill, 122; 16 Wend. R., 481.

[b] 5 Hill, 188. 7 Wend. R., 72.

[c] The Farmers' Insurance Company vs. Snyder, 16 Wend., 481.

warranted are not essential; for the description of the thing insured, when inserted in the policy, or when on another paper, and referred to in the policy in such a manner as to show that it was intended to be incorporated therein, amounts to a warranty.

It does not matter, also, on what part of the paper the warranty appears; it need not be in the body or printed part of the policy, it may be in the margin, or at the foot of the policy, and written in the usual way, or traversely.[d]

In Roberts vs. the Chenango County Mutual Insurance Company,[e] where a policy was printed on one side of a folded sheet, and on the other, was a statement, commencing thus: "Conditions of Insurance," but no express reference was made to this in the body of the policy, it was held that the statement formed a part of the policy, at least prima facie.

And in Murdock & Garrett vs. the Chenango County Mutual Insurance Company,[f] that a

[d] Kenyon vs. Berthon, 1 Doug., 12, n. Bean vs. Stupart, Doug., 11.

[e] 3 Hill, 501.

[f] 2 Comstock, 201.

paper, purporting to be conditions of insurance, if annexed to, and delivered with a fire policy, is to be deemed, prima facie, a part of it, although the policy do not contain any express reference to such paper.

But a written paper, wrapt up with a policy, has been held not to be a warranty.[g]

And in Bize vs. Fletcher,[h] a paper, though wafered to a policy at the time of signing it, was held not to be a warranty.

In the case of Roberts vs. The Chenango County Mutual Insurance Company, before cited, Justice Cowen, in referring to the decision of Bize vs. Fletcher, uses the following words: "The assured accepts the policy, with what purports to be conditions on the same sheet, or any sheet *physically attached.*" "It would be impossible to sustain the decision in Bize vs. Fletcher, (Doug., 12, n. 4.), if the slip wafered to the policy, had, like this, expressly declared itself to be conditions of insurance."

There are also cases, extending the effect of

[g] Pawson vs. Barnevelt, 1 Doug., 12, note 4.

[h] Doug., 13, note.

a warranty, over conditions and stipulations, neither inserted in writing on the face of the policy, nor on the same sheet, nor on a sheet physically attached. Thus, in Worseley vs. Wood,[i] and Routledge vs. Burrill,[j] printed proposals, referred to in a policy, were held to be part of it.

In the case of The Jefferson Insurance Company vs. Cotheal,[k] the court say: "The doctrine of warranty, in the law of insurance, is one of great rigor, and frequently operates very harshly upon the assured. A warranty is considered as a condition precedent, and whether material or immaterial, as it regards the risk, must be complied with, before the assured can sustain an action against the underwriters. A warranty is, therefore, never created by construction." "It must, therefore, appear on the face of the policy, in order that there may be unequivocal evidence of a stipulation, the noncompliance with which, is to have the effect of avoiding the contract." No case has been referred to, in

[i] 6 Term R., 710.

[j] 1 H. Blackstone R., 254.

[k] 7 Wend., 72. See, also, 2 Denio, 75.

which this rule has been relaxed, except in relation to the printed proposals of the underwriters, accompanying and always attached to the policy.

It has been held that the conditions specified in those proposals to be performed by the "assured, are conditions precedent, and are to be construed as warranties incorporated in the policy;" "but these printed proposals are always referred to by the policy, and it is in express terms declared, that the policy is made and accepted in reference to them."

In The Farmers' Insurance Company vs. Snyder,[l] the same doctrine was held, and the case having been carried up was affirmed in the Court of Errors, in which it seems that to give the effect of a warranty to a slip referred to in a policy, it should be referred to in such a manner as to show that it was intended by the parties that it should have that effect.

In Delonguemere vs. The Tradesmens' Insurance Company,[m] the subject of warranty is treated at great length and the same opinion held.

[l] 16 Wend., 481. 13 Wend., 92. See also 2 Denio, 75.

[m] 2 Hall S. C. Rep., 589.

In Burritt vs. the Saratoga County Mutual Fire Insurance Company,[n] all the preceding cases are adverted to, and the court held that a mere naked reference in a policy to the written application for insurance, will not make the latter a part of the contract so as to change what would else be a representation into a warranty; but it admits that a paper may be so referred to in a policy, as to be incorporated with it and constitute a warranty, and refers to Roberts vs. The Chenango County Insurance Company (3 Hill 501), in which such a reference was held to be a warranty.

These cases show what efforts have been made, to bring under the head of warranty declarations not inserted on the face of the policy, and they also show: 1st, That a warranty must appear on the face of the policy; or, 2d, That if on another part of the same sheet or on a sheet physically attached, the stipulations must of themselves show that they were intended to be incorporated and form part of the contract; or, 3d, That if on another paper, they

[n] 5 Hill, 188.

must not only be referred to in the policy itself, but must be referred to in such a manner as clearly to show that they were intended to be incorporated in the policy and form a part of the conditions thereof. That the courts will view with disfavor every attempt to construe as a warranty, any conditions or stipulations not in the policy itself or therein referred to, and will not aid such attempts by construction.

4. *Of Affirmative and Promissory Warranties.*

Warranties may be either affirmative or promissory; affirmative, where the assured undertakes for the truth of some existing fact; or promissory, where the assured undertakes to do or not to do some future act, as to be engaged in certain forbidden occupations, to visit certain restricted places, or to be of temperate habits, &c.

As to the warranty that the assured is of such an age, and as is often the case of such an age on some particular day, if the facts thus stated are not true, the insurers are released; although a slight mistake in the statement of the age, could be of no great importance to the

estimate of the risk, still as it is warranted, it makes no difference as to the insurer's liability, whether it be material or not.°

5. *Of the Clause that the Assured is "in Good Health."*

Under the clause that the assured is "in good health" at the time of effecting the assurance, a party will be entitled to recover, though he may be afflicted with some infirmity, if his life be in fact a good one and he be in a reasonable state of health and such as to be insured on common terms. Thus, in an action on a policy made on the life of Sir James Ross for one year, from October 1759 to October 1760, warranted in good health, at the time of making the policy; the fact was, that Sir James had received a wound in his loins at the battle of La Feldt, in the year 1747, which had occasioned a partial relaxation or palsy, so that

° It is understood few of the better class of companies would resist payment on the ground of a slight misstatement of age, unless the assured was guilty of fraud; although they might justly, and would probably, retain the extra premium which would have been required had the age been correctly stated.

he could not retain his urine or fœces, and which was not mentioned to the insurers. Sir James died of a malignant fever within the time of the assurance. All the physicians and surgeons who were examined for the plaintiff swore, that the wound had no sort of connection with the fever, and that the want of retention was not a disorder which shortened life, but he might, notwithstanding that, have lived to the common age of man; and the surgeon who opened him said, that his intestines were all sound. There was one physician examined for the defendant, who said, the want of retention was paralytic; but being asked to explain, he said, it was only a local palsy, arising from the wound but did not affect life; but on the whole he did not look upon him as a good life. Lord Mansfield said: "The question of fraud can not exist in this case. When a man makes insurance upon a life generally, without any representation of the state of the life-insured, the insurer takes all the risk, unless there was some fraud in the person insuring, either by his suppressing some circumstance which he knew, or by alledging what was false; but if the

person knew no more than the insurer, the latter takes the risk. In this case there is a warranty, and whenever that is the case it must at all events be proved that the party was a good life, which makes the question on a warranty much larger than that on a fraud. Here it is proved that there was no representation at all as to the state of life, nor any question asked about it, nor was it necessary. Where an insurance is upon a representation, every material circumstance should be mentioned, such as age, way of life, &c.; but where there is a warranty then nothing need be told, but it must in general be proved, if litigated, that the life was in fact a good one, and so it may be though he have a particular infirmity. The only question is, "whether he was in a reasonably good state of health, and such a life as ought to be insured on common terms?" The jury upon this direction, without going out of court, found a verdict for the plaintiff.[p]

Again, in an action on a policy on the life of Sir Simeon Stuart, Bart., from the first of

[p] 1 Wm. Blackstone's R., 312. 2 Park on Ins., 8 ed., p. 934.

April 1779, to the first of April 1780, and during the life of Eliza Edgly Ewer; the policy contained a warranty, that Sir Simeon was about fifty-seven years of age, and in good health at the time the policy was underwritten. It was proved on the trial, that although the insured was troubled with spasms and cramps, from violent fits of the gout, yet he was in as good health when the policy was underwritten, as he had been for a long time before; and also that the underwriters were told that the insured was subject to the gout.

Dr. Heberden and other physicians, who were examined, proved that spasms and convulsions were symptoms incident to the gout. Lord Mansfield said: "The imperfection of language is such, that we have not words for every different idea; and the real intention of parties must be found out by the subject matter. By the present policy, the life is warranted, to some of the underwriters, in health, to others, in good health; and yet there was no difference intended in point of fact. *Such a warranty can never mean that a man has not the seeds*

of disorder. We are all born with the seeds of mortality in us. A man subject to the gout, is a life capable of being insured, if he has no sickness at the time to make it an unequal contract." Verdict for the plaintiff.[q]

In an action on a policy of insurance, dated 22d of November, 1802, whereby the defendants, for a certain consideration, insured the life of the plaintiff's wife, *then warranted in good health*, and of the description set forth in a certain certificate, signed and dated 9th November, 1802, it was held that declarations made by the wife, while lying in bed, apparently ill, as to the bad state of her health, and her apprehensions that she could not live ten days longer, were admissible in evidence, to shew her own opinion, who best knew the fact

[q] Willis vs. Poole, sittings at Guild., East. Vac., 1780, 2 Park., 8th ed., p. 935. Cases similar to those of Ross vs. Bradshaw, and Willis vs. Poole, are not likely to occur again, as the companies of the present day never insure on the simple warranty of health, and the clauses inserted in the policy, as has been seen (chap. 2, ante), and the questions put, are so specific, as almost to preclude any possibility of their not being informed of every thing material to the risk.

of the ill state of her health, at the time of effecting this policy.[r]

6. *Of the Clause, that the Assured has no Disorder tending to shorten Life.*

As to the clause, that the assured has *no disorder tending to shorten life*, the mere fact of a person eventually dying of a disorder, with which he was afflicted, before effecting an assurance, is not to be considered as conclusive evidence, that he had a disease tending to shorten life, within the meaning of this clause, unless it was a disorder which generally has that tendency.

Thus, in an action[s] brought against the Equitable Insurance Office, to recover a sum which had been insured on the life of Dr. Watson; the office resisted the demand on the ground, that when the policy was effected deceased had (in breach of his declaration to the contrary) a disorder tending to shorten life, and that the policy was, therefore, void.

[r] Aveson vs. Lord Kinnaird and others, 6 East, 188.

[s] Watson vs. Mainwaring, 4 Taunt., 763.

For the plaintiff, it was proved by an eminent physician of Bath, to whom Dr. Watson had applied for advice, that his disorder was an affection of the bowels; that this disease may proceed from either of two causes, the one a defect of some of the internal organs, the other, a mere dyspepsia; that the first would tend to shorten life; that the second, though it renders the patient uncomfortable, does not, generally, unless it increases to an excessive degree, tend to shorten life, and that the complaint with which Dr. Watson was afflicted, was not the organic dyspepsia. Several other medical men stated, that they had attended Dr. Watson since the policy was effected, and that he was then quite free from the disorder. On the other hand, several medical persons stated, as witnesses for the defendants, that they had seen him at the time of his visiting Bath previously to effecting the insurance, and that they then considered him as a falling man. It was left to the jury whether the patient's complaint was the organic dyspepsia; if it was not, whether the dyspepsia under which he

labored was, at the time of effecting the policy, of such a degree, that by its excess it tended to shorten life. The jury found that it was neither organic or excessive, and gave a verdict for the plaintiff. On a motion made to set aside the verdict and have a new trial, on the ground that since the assured afterwards died of the same disorder, which he had before effecting the policy, that circumstance was conclusive proof, that he was then affected with a disorder tending to shorten life. Chambre, J., said: All disorders have, more or less, a tendency to shorten life, even the most trifling; as, for instance, corns may end in a mortification, that is not the meaning of the clause; if dyspepsia was a disorder that tended to shorten life, within this exception, the lives of half the members of the profession of the law, would be uninsurable. Gibbs, J.: According to the rule contended for, the assured, to be assurable, must have no disease at all. It can not be said that this was not a case, if ever there was one, fit to be left to a jury; and though the office had very good grounds to try

the cause, since it has been fairly submitted to a jury, there is as little ground for the court to interfere, as in any case that ever was tried. Rule refused.

But where there is no warranty, the underwriters run the risk of its being a good life or not, unless there be fraud. Thus, in Stackpole vs. Simon,[t] where a broker told the underwriter that the person for whom he acted would not warrant, but he believed the party to be a good life, the underwriter was held liable. Lord Mansfield said: "Where there is no warranty the underwriter runs the risk of its being a good life or not. If there be a concealment of the knowledge of the state of the life, it is a fraud. It is a rule, that every subsequent underwriter gives credit to the representation made to the first; and it is allowed that any subsequent underwriter may give in evidence a misrepresentation to the first. The broker here does not pretend to any knowledge of his own, but speaks from information: there is no fraud in him."

[t] Stackpole vs. Simon, sitt. at Guild, Hil. vac. 1779; 2 Park, 8 ed., 932.

7. *Of the Clause, Fits, Vertigo, &c.*

Where a policy of insurance contained a warranty that the assured "has not been afflicted with, nor is subject to gout, vertigo, fits," &c., such warranty is not broken by the fact of the assured's having had an epileptic fit in consequence of an accident. To vacate such a policy it must be shown that the constitution of the assured was naturally liable to fits, or by accident or otherwise has become so liable.[a]

8. *As to the Clause, Spitting of Blood.*

Where, in a policy, there was a clause that it should be void if any thing stated by the assured, in a declaration or statement given by him to the directors of the insurance company, before the execution of the policy, should be untrue, and in this declaration the assured stated, among other things, "that he had not had any spitting of blood, consumptive symptoms, asthma, cough, or other affection of the

[a] Chattock vs. Shawe and others, 1 Moody and Rob., 498.

lungs," and the judge in summing up read over the several issues to the jury, and in the course of it stated to them that it was for them to say, whether, at the time of his making the statement set forth in the declaration, the assured had had *such a spitting of blood and such affection of the lungs* and inflammatory cough as would have a tendency to shorten life; on the case being carried up, it was held that this was a misdirection, for although the mere fact of the assured having spit blood would not vitiate the policy, the assured was bound to have stated that fact to the insurance company in order that they might make inquiry, whether it was the result of the disease called spitting of blood.[v]

9. *Of the Clause, Sober and Temperate Habits.*

In Southcombe vs. Merriman,[w] it was held that if the rules of the insurance company stipulate that the assured shall be of sober and temperate habits. It is not necessary to prove his intemperance was of such a nature as to

[v] Geach vs. Ingalls, 14 Mees & Wels., 96.

[w] 1 Carr & M., 286.

endanger life or injure his health; but that on a plea denying his sober and temperate habits, it is sufficient for the defendants to show that his habits were intemperate, and that it is no answer to this plea, that the plaintiff prove the intemperance not to have been to such a degree as to injure the health of the insured or to shorten his life.

10. *Of the Clause, that the assured "Shall not commit Suicide," or, "Die by his own Hands.*

As to the clause, that the policy shall be void, "if the assured shall commit suicide," or, as in some policies, "die by his own hands," cases arose, in 1826 and 1832, where the question of suicide was involved, but in them the point was, whether the assured came to his death by suicide or from some other cause, and the jury finding that the assured did not commit suicide, the case ended.[x]

[x] Garret vs. Barclay, tried before Alexander, C. B., at the Lon. sitt. after Easter Term, 1826. Kinnear vs. Borradaile, tried before Lord Tenterden, C. J., at the sitt. in London. after Hil. Term, 1832.

The legal construction of the clause, that the policy shall be void in all cases, where the assured shall commit suicide, came, however, directly before the court in England in 1843, in the case of Borradaile vs. Hunter,[y] in which it was decided, that where a life policy contained a clause for avoidance "if the insured should die by his own hand," and the insured destroyed himself by drowning, the jury finding that at the time he threw himself voluntarily into the water, he knew he should thereby destroy life and intending thereby to do so, but that he was at the time of committing the act incapable of judging between right and wrong; held (dis. Tindal, C. J.), that the proviso was not limited to acts of felonious suicide but included all voluntary acts of self-destruction, and that the policy was avoided.

And later, in the English case of Clift vs. Schwabe,[z] which was argued and determined upon writ of error in the Exchequer Chamber and in the House of Lords in 1846, it was

[y] 5 Manning & Granger, 639.

[z] Manning, Granger & Scott (C. B.), 437.

held, that where the condition was, that the party should not commit suicide, and the judge had directed the jury that the death by the party's own hands, by his own voluntary act, being established, they were to presume him to be of sane mind and a responsible agent, unless the contrary appeared upon a bill of exceptions; held (Pollock, C. B., and Wightman, J., dis.), erroneous, that the terms of the condition included all acts of voluntary self-destruction, and that it was immaterial whether he was or was not at the time a responsible, moral agent.

In this country the construction of this clause was directly the reverse of the decision in England. Thus, in Breasted vs. The Farmers' Loan and Trust Company,[aa] which was argued before the Supreme Court of the State of New York at the January term of 1843, the defendants pleaded that the insured committed suicide by drowning himself in the Hudson river; the replication to which was, that when the insured drowned himself he was

[aa] 4 Hill, 73.

of unsound mind and wholly unconscious of the act, to which there was a demurrer that the replication furnished no answer to the matter set forth in the plea. The court gave the plaintiff judgment on the demurrer and decided that suicide, committed by the insured when bereft of reason, will not avoid a policy under the above clause. Chief Justice Nelson, in giving the decision of the court, said, "The question upon the demurrer is, whether Comfort's self-destruction in a fit of insanity can be deemed a death by his own hand, within the meaning of the policy. I am of opinion that it can not. Since the argument of the case, I have examined many precedents of life policies used by the different insurance companies, and am entirely satisfied, that the words in the policy in question import a death by suicide. Provisos declaring the policy to be void in case the insured commit suicide or dies by his own hand, are used indiscriminately by different insurance companies, as expressing the same idea; and so they are evidently understood by the writers upon this branch of the law."

After mentioning various companies which use this clause, he says: "The connection in which the words stand in the policy, would seem to indicate that they were intended to express a criminal act of self-destruction. As they are found in conjunction with the provision relating to the termination of the life of the insured in a duel, or by his execution as a criminal, this association may well characterize and aid in determining the somewhat indefinite and equivocal import of the phrase. Speaking legally also (and the policy should be subjected to this test), self-destruction by a fellow being, can with no more propriety be ascribed to the act of his own hand, than to the deadly instrument that may have been used for the purpose. The drowning of Comfort was no more his act, in the sense of the law, than if he had been impelled by irresistible physical power; nor is there any greater reason for exempting the company from the risk assumed by the policy, than if his death had been occasioned by such means. Construing these words, therefore, according to their true, and as I apprehend,

universally received meaning, among insurance offices, there can be no doubt that the termination of Comfort's life was not within the saving clause of the policy. Suicide involves the deliberate termination of one's existence while in the possession and enjoyment of his mental faculties. Self-slaughter, by an insane man or a lunatic, is not an act of suicide within the meaning of the law (4 Bl. Com., 189; 1 Hale's Pl. C. 411, 412). I am of opinion, therefore, that the plaintiffs are entitled to judgment on the demurrer."[bb] [cc]

[b] This case has since been carried to the Court of Appeals. Should their decision be given in season, it will be inserted in the appendix.

[cc] *Quere:* Whether the underwriters would be liable on a policy, under the above clause, where the suicide was committed by the assured while in a state of insanity or delirium, brought on by excessive drinking? As a party is not excused in law for any criminal act committed while insane, or unconscious from the effects of intoxication, should not suicide, committed under like circumstances, release the insurers? Should not suicide, committed from insanity produced by disease, be distinguished from suicide, committed by a party, while in a state brought on and induced by his own criminal act?

11. *Of the Clause, that the Assured shall not die by the Hands of Justice.*

As to the clause that the policy shall be void, if the insured die by the hands of justice, it would appear from the celebrated and only case on this point, that of Fountleroy,[dd] that it is immaterial, whether there be such a clause in the policy or not, that in either case the effect is the same, and that the insurers are released by the happening of such an event.

The facts in that case are these: Fountleroy effected a policy on his life on the eleventh of January, 1815. In October, 1824, he was declared a bankrupt; shortly afterwards he was convicted of forgery, and on the thirtieth of November he was executed, pursuant to his sentence. The insured had duly paid the premiums to the time of his death. There was no clause in the policy in regard to death by the hands of justice. On appeal before the House of Lords, the Chancellor held, that the insurers were released, that it was against public policy

[dd] Bolland vs. Disney, 3 Russel, 351. 4 Bligh, N. S., 194.

to allow an action to be maintained for the insurance, on the ground "that if such a contract was available, it would take away one of those restraints, operating on the minds of men against the commission of crimes, namely, the interest we have in the welfare and prosperity of our connections.

12. *Of the Construction of Warranties in General.*

From the cases heretofore cited, it would appear, that where the warranty is, that the assured *has not had* a particular disorder, as fits, spitting of blood, cough &c., the policy is avoided on proof of the fact, that he has had such disorder, although it may not have been to such a degree as to tend to shorten life. The assurers should be informed of the fact, in order to enable them to make proper inquiries as to the nature and cause of the disorder. But where the warranty is, that the assured *has not been subject to* a particular disorder, there, to avoid the policy, the fact of such disorder must not only be shown, but that the disorder was of

such a nature, or proceeded from such a cause, as is usually denominated by the term used. In the latter case, a fit, arising from an accident, as a fall, but the assured not rendered, by such accident *subject to* a recurrence of it, or a spitting of blood, from a tooth, the throat, or even from the stomach or lungs, provided it arose from some accident, and was merely temporary as incident to such accident, but did not assume, or exhibit the fixed character, which the term, *subject to*, implies, would not avoid the policy.

The term, intemperate habits, has a well understood, and popular meaning, and can not be construed to apply to the case of occasional drinking, provided such drinking does not proceed to the degree which would usually be denominated intemperate.

CHAPTER VI.

MISREPRESENTATION.

1. Misrepresentation in general, its form and effect.
2. Materiality of a fact misrepresented, a question for a jury.
3. Misrepresentation by a third party.
4. Misrepresentation through mistake, neglect, or accident.
5. Misrepresentation as to medical attendant.
6. Meaning of the clause "usual medical attendant."
7. Misrepresentation by the assurer.

1. *Misrepresentation in General, its Form and Effect.*

A representation is a written or verbal statement made by the assured to the assurer as to any fact, or state of facts, tending to induce him the more readily to assume the risk or to take it at a less premium.

There is no difference in the form of the words used between a warranty and a representation. They are both declarations or statements of

facts: the one, however, being always inserted on the face of the policy, annexed thereto or referred to therein; the other being usually independent of it. When a statement or answers, as in the case of the answers to the interrogatories put by the assurers, are inserted in the policy, or when the same are annexed thereto, or on another paper, but referred to in the policy in such a manner as to show that they were intended to be incorporated therein, they are construed as warranties and considered in the nature of conditions precedent, but when such declarations are verbal, or on a paper external to the policy and not referred to therein in the manner above stated, they will be construed as representations, considered as independent of the contract and merely collateral to it.

From this difference in form, arises the difference in the strictness with which they are required to be complied with.

When declarations are inserted in the policy, or referred to therein in such a manner as clearly to show they were intended to be

incorporated therein, they must be literally true and complied with, for they then assume the nature of conditions precedent: but when the same declarations are verbal or external to the policy and not referred to in such manner, they are then independent of the contract, merely collateral to it, and need only be substantially complied with.[a]

A fact represented may sometimes be untrue and still not vitiate the contract, but a fact warranted, when once proved to be untrue, defeats all right to recover on the policy.[b]

[a] Pawson vs. Watson, Cowp., 785; De Hahn vs. Hartley, 1 T. R., 343; Mayne vs. Walter, B. R. East., 22, George III; Clarke vs. The Manufacturers' Insurance Company, 2 Woodbury & Minot's R., 487.

[b] Life policies are now usually drawn in such a manner that but few statements which would otherwise be merely representations, can escape being construed as warranties, a clause being usually inserted in the policy referring to the proposal and answers which are extrinsic to the policy and expressly providing that such declarations shall be deemed to be incorporated in the policy, and form a part of the conditions on which the contract is formed. The assurer's naturally aiming to give every thing the strict construction of a warranty to preclude all evidence, except of the literal truth or untruth of the facts stated.

Although a representation is not usually inserted in the policy, still, "it may be inserted, and yet not require, in that case, the severe construction given to a warranty, provided the statement relates, not to facts, but to the information, expectation, or belief of the party; or, provided the parties declare at the same time, their intention, that the statement should be taken to be a representation merely.[c] As parol evidence is not admissible to vary or contradict a written contract, any declaration of the assured, explanatory of, or contradicting, or tending to vary the terms inserted on the face of the policy, should also be noted therein, or it should be expressly stated, that such statement should have the effect of a representation merely, otherwise, all such declarations would, doubtless, be construed as warranties. The very object of inserting a statement in the policy, is to give it the form of a warranty, and thus preclude all other evidence, except of the truth or untruth of the facts stated. Where a

[c] 3 Kent, 7th ed., 350. Rice vs. New England Insurance Co., 4 Pick., 439. Lothian vs. Henderson, 3 B. & Pul., 499.

policy, in the body of it, refers to representations made by the assured, and provides, that they are to be true or the insurance is void; it is competent to show by evidence, dehors the policy, what the representations were.[d]

A representation, as we have heretofore stated, is the statement of a fact *tending to induce* the assurer to assume the risk; facts which are immaterial can have, or are presumed to have, no effect on his mind; therefore, it is only a representation of those which are material, which can induce him to assume the risk, and consequently only the misrepresentation of such facts will avoid a policy.

2. *The Materiality of a Fact misrepresented, a Question for a Jury.*

The fact that the assurer considered a fact misrepresented, to be material, or that the assured did not so consider it, has no effect on the contract; but this is solely a question to be determined by a jury.[e]

[d] Woodbury & Minot's R., 479; idem, when and what evidence is admissible.

[e] Morrison vs. Murspratt, 4 Bing., 60.

It is evident that what the assured may, or may not, consider material, can not affect the mind of the assurer in entering into the contract, he being governed entirely by his opinion formed from the state of facts as they are actually represented; neither would it be just to take as a criterion of materiality, the assertion of the assurer, made, in most instances, after the loss had occurred, for he would naturally be inclined to assert, that the fact misrepresented would have had an effect on him in determining whether he would insure at all, or at what rate, and consequently material; the true rule therefore is, as laid down above, and as has been decided by authority, that the materiality of facts represented is exclusively to be determined by the jury. Whatever facts represented would naturally induce a person to enter into such contracts, or govern the rate at which the risk would be taken, would probably be held to be material.

3. *Misrepresentation by a Third Party.*

The effect of a misrepresentation is the same, whether made by the assured, or his agent, or

by any other person concerned in his behalf about the assurance. Thus, in Fitzherbert vs. Mather,[f] it was held, that "any person acting by the orders of the insured, and who is in anywise instrumental in procuring the insurance, is bound to disclose all he knows to the underwriter, before the policy is effected; and where any *misrepresentation* arises from his fraud or negligence, the policy is void. Where one of two innocent persons must suffer, by the fraud or negligence of a third, whichever of the two gave credit ought to bear the loss."

Where a creditor assures the life of his debtor, and allows such debtor to make representations concerning the state of his health, and such representations are false, although the creditor, for whose benefit the assurance is effected, may be ignorant that the representations made by such debtor are false, he is nevertheless bound by them, and the policy is thereby vitiated.[g] The debtor, in such cases, will be held to be the agent of the creditor, and the creditor bound

[f] 1 T. R., 12.

[g] Maynard vs. Rhodes, 1 Carr. & P., 360.

to a parol inquiry, and the policy is, by the articles of the insurance office, to be void on false answers being given to certain written inquries; therefore, where a party, going to insure her life for two years, gave false answers to verbal inquiries whether she had effected similar insurances at other offices, held that the policy was thereby avoided.[j]

5. *Misrepresentation as to Medical Attendant.*

It is a general rule of the insurance companies, to require a reference to the medical attendant of the party, in order to consult him with regard to the health, constitution, &c., of the applicant. If the true one is not stated, or there is any misrepresentation in regard thereto, the policy may be avoided. Several cases have occurred, where the underwriters have been released, on the ground of an improper or insufficient reference.

Thus, in Maynard vs. Rhodes,[k] the policy was avoided on the ground that there was a

[j] Wainwright vs. Bland, 1 Mees & Wels., 32. 1 M. & Rob., 481. 1 Gale, 406.

[k] Maynard vs. Rhodes, 1 Carr. & P., 360.

misrepresentation with regard to the medical attendant of the insured. It was proved that the office, previous to the execution of the policy, sent a number of printed questions to the insured (Col. Lyon) for him to answer, among which were the two following: "Who is your medical attendant?" To which Col. Lyon answered, "I have none except Mr. Guy of Chichester." And, "Have you ever had a serious illness?" To this he answered, "Never!" Mr. Guy was referred to, and he gave it as his opinion that Col. Lyon was an insurable life. But it was proved that Mr. Guy had not been called on to attend him for three years previous to his giving his certificate; but that in the year 1823 Col. Lyon was attended from the month of February to the month of April, by Dr. Veitch, a physician, and Mr. Jordan, a surgeon, for an inflammation of the liver and a fever and determination of blood to the head. The former of these gentlemen proved that he considered him to be in a dangerous way, and that he prescribed active medicines, and ordered him sometimes sixteen leeches a day, and that he would not have certified him to be in health,

till the end of the month of May. It was, however, agreed on all hands, that the disease of which he died had no relation to any of the complaints for which these gentlemen attended him. Abbot, C. J., said, "The question is, whether any willful misrepresentation or suppression of the truth took place on the part of Col. Lyon to induce the office to effect these policies; and the jury must consider whether the reference to Mr. Guy, when he was daily attended by a physician and surgeon in town, was intended to prevent a disclosure of his real state of health; for if he referred to Mr. Guy because he would speak well of his health, and thought that if he referred to the other medical men they would not so certify, *though he did not die of the disease he was then afflicted with*, I am clearly of opinion that the defendant is entitled to recover; and if the reference was made to Mr. Guy because he did not know the Colonel's latter state of health, this is such a misrepresentation as will avoid the policy; and though the party here was an annuity creditor of Col. Lyon, yet if he allowed the Colonel to make these repre-

sentations when the policy was effected, he is bound by them; and however hard it may be on the plaintiff, the rules of law must be adhered to. Verdict was given for the defendant.

And where a female, upon whose life it was proposed to effect an insurance, was represented to the underwriters in December, 1822, by A, a medical man, as enjoying ordinarily a good state of health, and the same representation was repeated by A, in March, and the insurance was effected in April, 1823, and between December, 1822, and March, 1823, she had been ill with a pulmonary attack and was attended by B, but no disclosure of these circumstances was made to the insurers: Held, on motion for a new trial, that the jury ought to have been called on to consider whether the illness in 1823 and the attendance of B, ought to have been disclosed to the insurers, and that it was not sufficient to direct them, generally, to consider whether or not there had been any misrepresentation. In the above case, Chief Justice Best said, "Whether or not it was

material for the defendants to have been made acquainted with the fact, which has been withheld from their knowledge, is a question for the jury. It is probable, however, it would be esteemed material, because all insurance offices are desirous to consult with the medical man who has been last in attendance on the life insured. I think, therefore, there should be a new trial, on the payment of costs, as the attendance of Bland on Mrs. Elgie was not disclosed to the insurers."

Burroughs, J.: "Advantage ought not to be taken of the omission of trifling circumstances, but the attendance of Bland on Mrs. Elgie ought to have been brought to the attention of the jury to decide whether or not it ought to have been disclosed to the defendants."[1]

6. *Meaning of the Phrase, "Usual Medical Attendant."*

The phrase, "usual medical attendant," means the person who is best acquainted, by experience, with the constitution of the individual,

[1] Morrison vs. Muspratt, 4 Bing, 60.

and, therefore, if a person has been attended by a medical man for several years in serious disorders, and afterwards takes another, who has only seen him once or twice, the giving the name of the latter as his usual medical attendant, without mentioning the circumstances under which he was attended by the others, is a wrong answer and will vitiate the policy.[m]

Again, in Everett vs. Desborough,[n] where a reference was required to the usual medical attendant of the party, and the insured referred to a person who, although having known him from his birth, had never attended him, and said nothing of a person who had attended him of late years, held that the policy was avoided.

From the cases cited in this chapter, we therefore conclude, that the principle on which all misrepresentations, and the reason why they should vitiate the policy, rests, is, that the minds of the parties have not met, in the manner they intended at the time of making the contract. The assurer, determining to assure the risk on

[m] Huckman vs. Fernie, 3 Mees & Wels, 505. 1 Horn. & H., 149.

[n] Everett vs. Desborough, 5 Bing., 503.

a representation of facts which is untrue, and which, if it had been truly stated, would have affected his mind, as to assuming the risk at all, or at what rate. It is therefore evident, that it is immaterial, whether the misrepresentation arose through neglect, accident, or fraud, or whether made by the assured himself, by his agent, or by any one concerned in his behalf in effecting the assurance; and though the assured should die from some other cause, not in the least connected with the fact misrepresented, yet this is no evidence that the fact misrepresented did not affect his mind in entering into the contract.

The fact misrepresented must, however, be material to the risk, otherwise it will be presumed to have had no effect on the assurer in determining on the risk, and this is exclusively a question for a jury. But when the fact misrepresented is found to have been material, it will then be presumed, that the assurer would not have entered into the contract had the fact been truly stated, and therefore, without going further, the policy is thereby vitiated.

7. *Misrepresentation by the Assurer.*

The underwriter, equally with the insured, is required to act in good faith, and not be guilty of misrepresentation, and an action on the case lies for false representations of the affairs of an insurance company, whereby the party is induced to effect an insurance with the company, although no actual pecuniary damage has been sustained beyond the payment of premiums.[o]

[o] Pontifex vs. Bignold, 3 Mann & Grang., 63.

CHAPTER VII.

CONCEALMENT.

1. Concealment in general, its effect.
2. What things need not be disclosed.
3. Materiality of a fact concealed, a question for a jury.
4. As to facts not within the knowledge of the insured.
5. Concealment of intemperate habits.

1. *Concealment in General, its Effect.*

Concealment is the withholding of any fact within the knowledge of the assured at the time of effecting the assurance, which would affect the mind of the assurer so as to induce him the more readily to assume the risk or to take it at a less premium.

The same remarks may be applied to concealment, as were made with regard to misrepresentation; the former will, like the latter, vitiate a policy only where the fact is material.

The general principle of the law of concealment, and the reasons why it should avoid a policy, are clearly laid down by Lord Mansfield in the case of Carter vs. Boehm,[a] and are sound law to the present day. In that case, he says: "It may be proper to say something in general of concealments which avoid a policy. The special facts upon which the contingent chance is to be computed, lie most commonly in the knowledge of the *insured* only; the underwriter trusts to his representation, and proceeds upon confidence that he does not keep back any circumstance in his knowledge to mislead the underwriter into a belief that the circumstance does not exist, and to induce him to estimate the risk as if it did not exist. The keeping back such circumstance is a fraud, and therefore the policy is void. Although the supression should happen through mistake, without any fraudulent intention, yet still the underwriter is *deceived* and the policy is *void*, because the risk run is really different from the risk understood and intended to be run at the time

[a] 3 Burr, 1905.

of the agreement. Good faith forbids either party, by concealing what he privately knows, to draw the other into a bargain from his ignorance of that fact, and his believing the contrary."

2. *What Things need not be Disclosed.*

Lord Mansfield further says in the same case: "There are many matters as to which the insured may be innocently silent; he need not mention what the underwriter knows, scientia utrinque par pares contrahentes facit." "The insured need not mention what the underwriter ought to know, what he takes upon himself the knowledge of, or what he waives being informed of."

By the above, as applicable to life assurance, is to be understood that the insured need not mention the *nature* or *effect* of any particular disease, with which he may be or has been afflicted, for this is a matter the insurer ought to know, or takes upon himself the knowledge of; nor need he mention the *effect* of different climates, trades, occupations, or courses of

living, for these are grounds open to both, to exercise their judgment upon.

It is the custom of many insurance companies to ask the applicant for insurance, such questions as the following: Of what age is your father, mother, brothers, and sisters? Or, if dead, at what age did they die? And, of what disease did they die? Now such facts as the above questions would elicit, would come ordinarily under the last head; and if not inquired about by the insurer may be considered as waived. We say, ordinarily, for there might be a case, where it would, perhaps, be considered fraudulent to withhold such facts, as where the parents and relations of the applicant had all, or mostly, died extremely young, or had died of some hereditary disease, as consumption or scrofula.[b]

[b] There has appeared in the February number of the American Law Register for 1853, the following English case on this subject. Duff and others (directors of the Commercial and General Life Assurance Company) vs. Gant, in which an important decision was given by the judges, as to the obligation of a party assuring his life, to disclose material facts, respecting which he may not be questioned. On the trial it was proved that the de-

The rule laid down by Mr. Dunning, in his argument of this case, seems the most clear and concise, viz: "That the insured is only obliged to discover *facts*, not the *ideas* or *speculations* which he may entertain upon such facts."

Thus, one must state the fact of his having, or having had any disease, but need not state his opinion of its effect on the duration of life; and should he have resided in any country, it is sufficient to mention the fact, and it is no concealment, if he does not inform the insurer what his ideas or speculations are, with regard to its effect on the constitution; for these are "grounds, open to both, to exercise their judgment upon."

ceased's mother and brother had died insane and that the assured knew such fact on effecting the policy. The question proposed by the office was: "If aware of any disorder or circumstance tending to shorten life, or to make an assurance more than usually hazardous." For answer to this the deceased had written "Don't know any." The counsel for the office, on moving for a new trial on the ground of misdirection, contended that it was material that the deceased should have communicated to the office the manner in which his relations died. The Lord Chief Baron held, it was not necessary that a man should voluntarily state the circumstances attending the death of his relations.

3. *Materiality of Fact concealed, a Question for a Jury.*

That the assured did not consider a fact material, will not excuse the concealment of a material fact; and whether the fact is material or not, is a question for a jury.

Thus, in Von Lindenau vs. Desborough,[c] which was an action on a life policy, it was held, that if the insured, at the time of effecting the policy, conceals any thing which it is material for the insurer to know, the policy is void; and it makes no difference whether the insured considered it material or not, and what amounts to a misrepresentation, or to a material concealment, is a question for the jury. The fact, that on a life policy, an unusually high premium was paid, is quite immaterial; and is, therefore, not to be taken as proof that the office considered the policy as bad. Thesame principle was held in the case of Curry vs. The Commonwealth Insurance Company;[d] and where a declaration

[c] 3 Carr. & P., N. P., 353. 8 Barn. & Cres., 586.

[d] 10 Pick. R., 535.

stated the assured to be a resident of a place, and the assured, although a resident of that place, was in the county jail there, held, that it was a question for the jury, whether the imprisonment was a material fact, and ought to have been communicated.[e]

4. *As to Facts not within the Knowledge of the Assured.*

Will the non-communication of a material fact, unknown to the assured, vitiate a policy, for concealment?

Upon the general principle, gathered from decisions and dicta in various cases, it may be safely laid down, that, although the fact withheld be material, still if it was not in the knowledge of the insured, and, therefore, incapable of being communicated by him, the policy will not be avoided; thus we find in Carter vs. Boehm,[f] Lord Mansfield says: "The underwriter proceeds upon confidence, that he

[e] Huguenin vs. Rayley, 6 Taunt., 186.

[f] 3 Burr., 1905.

does not keep back any circumstance, *in his knowledge*, to mislead the underwriter," &c. Again, "good faith forbids either party, by concealing what *he privately knows*, to draw the other into a bargain," &c. In Biays vs. The Union Insurance Company,[g] it was held, that it is the duty of the insured to represent truly to the underwriter every fact within his *knowledge*, or *power*, material to the risk, and if he omits to do so, the policy is void. If he communicated all the information he has obtained, he can not be charged with misrepresentation or concealment, if it should afterwards turn out, that his informant knew more than he had disclosed, or had not stated it truly.

In Arnauld on Insurance,[h] an excellent work on marine insurance, concealment is thus defined: "Concealment, in the law of insurance, is the suppression of a material fact, within *the knowledge* of either party, which the other has not the means of knowing or is not presumed to know." In all the above quotations,

[g] 1 Wash. Cir. C. R., 506.

[h] Second ed., with notes by J. C. Perkins, Boston, 1850.

it will be seen that the knowledge of the fact by the party, enters as an important part and exception to the general rule. Further, the insured, save in case of a warranty, is never required to be or to have been perfectly free from disease. The insurer necessarily must take the risk upon himself, and all that can be required of the insured, and all he should be responsible for, is to use good faith and caution in making the contract, not to withhold any thing he knows. That the policy should be void where the insured, although acting in good faith, conceals a material fact, by accident or mistake, or because he did not consider it material, is just; for here he knows the fact and has been guilty of negligence: but is it just to avoid a policy on the ground that a material fact has been withheld, where the fact was unknown to the insured, and could not therefore have been communicated by him?

In Swete vs. Fairlie,[1] it was held that a policy of insurance on the life of another person, who at the time of the insurance is in a

[1] 6 Carr. & P., 1.

good state of health, is not vitiated by the non-communication by such person of the fact of his having a few years before been afflicted with a disorder, tending to shorten life, if it appear that the disorder was of such a character as to prevent the party being conscious of what had happened to him while suffering under it.

It appears from a case cited by Mr. Ellis[j] that the circumstance of a single woman having had a *child* two or three years before the insurance upon her life was effected, within the knowledge of the party effecting it, may be under circumstances a *material fact*, which he ought not to conceal.

A policy obtained for the purpose of enabling the insured to commit a crime is void, but where one honestly effects an insurance on his life, with no such intention, the policy will not be vitiated by his immoral conduct afterwards.

Thus, in Lord vs. Dall,[k] which was an action on a policy of insurance made for five thousand dollars in favor of the plaintiff upon the life of

[j] Ellis on Life Assurance, p. 115.

[k] 12 Mass., 115.

Jabez Lord her brother, aged thirty-three, bound on a voyage to South America, or any other place he might proceed to, from Boston, commencing the risk on the 16th December, 1809, at noon, and to continue until the 16th of July, 1810, at noon. It was proved on the trial that the said Jabez had died on the coast of Africa and within the time in the policy. It was also proved that Jabez sailed from Boston after the making of the policy to Fayal as supercargo of a vessel called the Mt Ætna, at which place she was converted into a Portuguese vessel called the Vincidero, still belonging to the former owners, but sailing with Portuguese papers and under Portuguese colors. From Fayal the vessel sailed to Madeira and from thence to the coast of Africa for the purpose of procuring slaves, with intention to carry them to South America, the said Jabez acting as supercargo and having purchased some of the slaves himself. Among the objections made at the trial to the plaintiff's recovery were the following: "That there was a concealment of the intention of the said Jabez to go to the

coast of Africa." And, also, "That the policy was void, it being to secure the life of the said Jabez while in the execution of an unlawful enterprise." It was not made certain whether the said Jabez originally designed to go to the coast of Africa, or whether that voyage was conceived after the vessel left Boston, and the jury were directed that if they were satisfied there was such concealment, to find for the defendants. The jury found there was no concealment. The last objection then remained, upon which, Chief Justice Parker, delivering the opinion of the court, said: "It is sufficient answer to this objection, that whatever the law may be as to an insurance upon an illicit voyage, between the parties to the contract, the present plaintiff being ignorant of any intended violation of the law, ought not to be affected by such illegality. Had the policy been effected for Jabez Lord himself, it might be a question, whether, as the underwriters had excepted no particular employment in which he might be engaged, and no cause of death but suicide and forfeiture of life for

crime, whether his engagement in any traffic, prohibited by law, would have discharged their liability. If it would, it must be only because it might be thought just and legal to discourage contracts which might tend to uphold enterprises forbidden by the law. It would be difficult, however, to maintain that the executors of a man, whose life was insured for the benefit of his children, should be deprived of their right to enforce the contract, because he had pursued a course of smuggling or counterfeiting, neither of these acts being excepted in the policy, and the party having died within the time, from a cause which was clearly at the risk of the underwriters. A policy made for the purpose of enabling a man to commit crimes, would undoubtedly be void ; but one honestly made would seem not to be affected by the moral conduct of the party who had procured it."

5. *Concealment of Intemperate Habits.*

Will the fact that a man has intemperate habits, vitiate a policy, where there is no clause

to that effect, as being a concealment of a material fact?

It may be said, that mere intemperate habits will not vitiate a policy, unless carried to such an excess as to tend to shorten life; and, that in each case, it will be a question for a jury, whether they have been carried to such an excess; because, if they do not have that tendency, they can not well be material.

It has, however, been laid down in a late work,[1] that, "if the applicant is addicted to habits of intemperance, that fact should not be concealed from the insurers," and that, "in two cases, the actions were defeated upon the ground, that the knowledge of such habits had been withheld, although the health of the individuals was, at the time, apparently, good."

We, however, do not consider that the cases referred to support the above inferences.

In the case of Aveson vs. Lord Kinnaird,[m] referred to by Dean, the action was brought on a policy, where the insured was *warranted in*

[1] Dean's Medical Jurisprudence, p. 623.

[m] 6 East, 188.

good health, and the case, as left to the jury, was not, whether the mere fact of intemperance was material, but, "whether from the evidence of Mrs. Aveson's habit of *excessive drinking*, as proved by the defendants' witnesses, they were satisfied, that at the *time of the insurance*, *the mischief was actually done, and her constitution then radicallg impaired, so as not to be a good life, within the meaning of the warranty;* and the jury, being of that opinion, found a verdict for the defendants. The verdict, in this case, was, therefore, given, not on the ground that the insured had *intemperate habits*, but, that *these habits had been carried to such an excess*, that the *constitution of the insured was materially impaired*, so as not to be a good life within the meaning of the warranty; and the very leaving of the case in this shape to the jury, gives rise to the natural inference, that if the habits had not been carried to such a degree as to impair the health of the insured, the fact would not be material.

And in Everett vs. Desborough,[n] the second

[n] 5 Bing., 503.

case referred to, we find, that although, on the part of the office, it was proved that the insured, when he resided at Bath, had been wont, occasionally, to indulge in extraordinary fits or bouts of intoxication, and that at these times he would be drunk day and night, incessantly, for ten days, a fortnight, and even three weeks, swallowing any thing and every thing that came in his way; and, although on the part of the office it was contended, that these *bouts of intoxication were a material circumstance, the non-disclosure of which avoided the policy;* still, the jury found that House was an *insurable life*, and that there *was no concealment of any material circumstance.*

And when a rule, nisi, was obtained to set aside this verdict, and enter a nonsuit instead, upon the grounds urged at the trial, no notice is taken of the ground of intemperance, by any of the four judges who gave decisions in the case, save by Chief Justice Best, who merely said, "without discussing the question whether habits of *inveterate drunkenness* have a tendency to produce disease or not, we may stop short here,

and say, you have not referred to the medical attendant as you were required to do;" so that the nonsuit was granted, on the ground that the insured had not referred to the medical attendant as he was required to do.[o]

It is a general rule, however, of the insurance companies of the present day, to require, that the insured shall be of temperate habits; and clauses to that effect are now usually, if not universally, inserted in policies. In such a case, therefore, as decided in Southcomb vs. Merriman,[p] it will only be necessary to show that the insured has intemperate habits, and not that the habits were carried to such an excess, as to impair the health of the party.[q]

[o] Neither of these cases, therefore, appear to contradict the proposition made by us, but would, from the expression used, seem rather to support it.

[p] 1 Carr. & M., N. P., 286.

[q] There is also a clause, now usually inserted in policies, that if the insured shall become addicted to intemperance, the policy shall be void.

Where there is no clause to that effect, as to future conduct, could the policy be avoided on that ground? Would not the only remedy for the insurers be, to refuse to renew the policy? We have no case in our mind, touching this point, and therefore can only leave it as a question which is yet to be decided.

CHAPTER VIII.

OF THE ASSIGNMENT OF POLICIES.

1. Of the legality of assignments.
2. Of notice to the assurers of the assignment.

1. *Of the Legality of Assignments.*

In marine insurance, custom has sanctioned the transferability of policies to a much greater extent than in fire or life insurance. In England, under the statute 14 Geo. III, c. 48, requiring an interest in the life insured, much discussion has arisen as to whether a life policy can legally be assigned even for a valuable consideration, so as to entitle the assignee to bring an action upon it against the assurer. Mr. Farren[a] insists that a man can not legally dispose of his policy to a stranger, that the law would not aid the assignee in his claim on

[a] Farren on Life Assurance, 25.

such assignment and the payment of the money on a policy so transferred is entirely at the discretion of the directors. Mr. Blaney,[b] on the other hand, considers the opinion of Mr. Farren as merely speculative, and can not conceive how any authority referred to by him, can bear him out in such assertion; that "if a policy is valid in its origin, it can not be invalid in the hands of an assignee under a bona fide purchase."

In Ashley vs. Ashley,[c], it was decided, that a purchaser for a valuable consideration is entitled to stand in the place of the original assignor, so as to bring an action in his name for the sum assured. Mr. Ellis,[d] in commenting on this case, says: "The effect of this decision, however, is not such as can prevent questions being raised between the assignee and the office; it merely decides his right to bring an action." There is, however, a strong obiter dictum in this case going to the extent,

[b] Blaney on Life Assurance, 75.

[c] 3 Sim. Chan. R., 149.

[d] Ellis on Life Assurance and Annuities, p. 143.

that the assignee could recover of the assurer. The Vice Chancellor says: "Unless this transaction is affected by the act of parliament, no objection can be made to it. By the 14th Geo. III, c. 48, it is enacted, &c." (His Honor here read the three first sections of 14th Geo. III, c. 48.) "Now there is not a word said here, as to the assignment of policies; this policy was good at the time it was effected. By an instrument of the 10th of March, 1810, an assignment of it was made, and subsequently the parties, who had become entitled to the policy, sold it for a valuable consideration, under a decree of the court, so that some person became entitled to bring an action on the policy, in the name of the assured, *and if such an action had been brought, there is not a word in the act of parliament to defeat it.*"

In this country, at least in the states to which life assurance is, at the present, almost exclusively confined, there is no statute restricting the assignability of life policies; the only statutes which appear to have any bearing on the subject, are those which have been enacted

against gaming and wagering,[e] and although these might be construed to apply to the formation of the contract, yet can no more than the statute of George III, as stated by the Vice Chancellor in his decision in the case of Ashley vs. Ashley (3 Sim. Chan. Rep., 149) be extended to the assignability of life policies, when once legally made.

Life policies, unlike fire or marine, after having run some time, have an inherent value which increases with their age, and there is no reason of justice or public policy which should restrain their negotiability any more than that of many other species of property.

The rule of public policy as to their formation does not apply to the bona fide transfer, for a valuable consideration, of the contract when once legally made. It is true that where one person induces another to effect an assurance, intending by assignment or otherwise to obtain the benefit of it himself, such assignment might doubtless be considered a fraudulent evasion of the rule, and therefore void;[f] but

[e] N. Y. Rev. Stat., vol. I, chap. xx, tit. 8, art. 3, § 8, 9, 10.

[f] Wainwright vs. Bland, 1 Moody & R., 481.

where an assurance is effected in good faith and afterwards assigned, bona fide, for a valuable consideration, there appears to be no rule of law or of public policy, which would authorise the claims of such an assignee to be defeated. The practice of assigning policies is quite common, and as cases in which life policies have been assigned, have frequently been before the courts on other points, without a remark being dropped as to their invalidity, an opinion favorable to their validity may reasonably be inferred. Thus, in Cook vs. Black,[g] a debtor effected an assurance on his life, one condition of the policy being, that if it should be assigned bona fide, the assignee should have the benefit of it, so far as his interest extended, notwithstanding the assured should commit suicide. He deposited the policy with his creditor, accompanied by a letter promising to assign it to him when requested, as a security for his debt. No notice of the assignment was given to the assurers. The debtor

[g] 1 How., 390. 6 Jur., 164.

committed suicide; held, that inasmuch as the deposit of the policy and the agreement to assign it, by way of security for a debt, constituted in equity a valid assignment as between the parties to the transaction, it was also an effectual assignment within the condition as against the assurers.

And where, upon a settlement of a wife's property, to the intent of making provision for the husband if he survived her, it was provided that the trustees should pay out of the trust fund the premiums of a policy of a stated amount on the life of the wife, and, on the principal becoming payable, invest the amount, and pay the interest to the husband for life, and afterwards pay the principal as the wife should appoint, or, in default of appointment, to the persons entitled under the statute of distributions; the wife having survived, and being unwilling to continue the payment of the premium, assigned the policy to a cousin, who paid the premiums, and his representative afterwards, who, on the death of the wife, received the amount of the policy; held, that

such assignment was valid, and the assignee entitled to the benefit thereof.[h]

Where a creditor insures the life of his debtor and afterwards assigns the policy and subsequently the debt is paid, the assignee loses the benefit of the assurance, for the payment of the debt releases the assurers.

Where, however, a debtor insures his own life and assigns the policy to his creditor as a security for his debt, on the payment of the debt, the debtor or his representatives will be entitled to the benefits of the assurance.

2. *Of Notice to the Assurers of the Assignment.*

In fire insurance, when the title or interest in the property insured changes, the policy becomes void; the benefits of the policy are, however, continued to the assignee of the property, on assignment of the policy to the person interested, with the consent of the company.

There appear to have been no adjudications

[h] Godsal vs. Webb, 2 Keene Ch. R., 99.

on this subject, arising on life policies, and, therefore, no settled rule can be laid down in regard thereto.

There is one great distinction, however, between fire and life policies, arising from the nature of the subject insured: a house is as insurable at the end of ten years, as at the end of one, and, surrounding circumstances remaining the same, would be taken at the same rate; but the risk on a man's life varies with his age and health, and the premium consequently varies; again, the past time of a fire policy is of no benefit to any one, while on a life policy, the pecuniary value increases with the age. The free assignability, or sale of life policies, is, consequently, a great inducement to this species of insurance.

Again, the interest in the subject insured in a life policy, never changes, except in the single case of a creditor insuring the life of his debtor; there is, consequently, no necessity, except in such a case, of notice to the assurers of the assignment, and in point of fact this is seldom if ever required, most life policies containing

a clause that the policy may be assigned without notice.

In case of the assignment by a creditor of a policy on the life of his debtor, the debt should also be assigned , and the assignee, for his own protection, should give notice to the debtor of the assignment.

It would be advisable, also, for the assignee, in all cases, to give notice to the assurers, so that in case of the policy falling due, he may the more readily secure to himself the sum secured.

The English authorities, cited in Ellis on Insurance, with regard to notice being given to the assurers of the assignment, appear all to arise under their statutes of bankruptcy; and there being no such statutes in this country, it has not been thought necessary to refer to them.

CHAPTER IX.

OF THE RETURN OF PREMIUM.

1. Where there is a clause in the policy in reference thereto.
2. Where there is no clause in the policy.

1. *Where there is a Clause in the Policy in reference thereto.*

It is now customary for the assurers to insert in life policies, a clause to the effect, that in every case where the policy shall cease or become null and void, all premiums that have been paid thereon shall be forfeited to the company.

In all such cases, according to the terms of the agreement, all premiums that have been paid are absolutely lost to the assured.

This clause is of course only applicable to the case of the policy becoming void through some act, whether negligent or fraudulent, on

the part of the assured, and not to a case of fraud on the part of the assurers.

In Duckett vs. Williams,[a] an action was brought to recover back the premiums paid on a policy which had been declared void for misrepresentation, and in which there was a clause that if the facts required to be set forth, were not truly stated, all moneys paid thereon should be forfeited. The plaintiffs contended that the words must mean truly or untruly within the knowledge of the party making the statement, and that if the assured ignorantly and innocently makes a misstatement, he is not to forfeit the premium under the clause of the agreement; but the court held that was not the true meaning of the words, that the knowledge of the party was immaterial, and directed a nonsuit.

2. *Where there is no Clause in the Policy.*

Where no provision is made in a policy as to the return of premiums, the case would have to be governed by the general principles of

[a] 4 Tyr. 240. 2 Carr. & Marsh., 348.

insurance, for few, if any cases, other than the one before cited, have arisen on life policies.

On a life policy, the risk is always entire, and by the general law of insurance, as laid down by Lord Mansfield, where the risk is entire, and has once commenced, there shall be no return of premium. If, therefore, the assured should die or commit suicide the next day, there would be no return of premium,[b] but where the risk has not commenced the premium may be recovered back; for Lord Mansfield, in the case of Tyrie vs. Fletcher,[c] laid it down as a general principle of insurance: "That where the risk has not been run, whether its not having been run, was owing to the fault, pleasure or will of the assured, or to any other cause, the premium shall be returned; because, a policy of insurance is a contract of indemnity; the underwriter receives a premium for running the risk of indemnifying the insured, and, whatever cause it be owing to, if he does

[b] Dicta of Lord Mansfield in the case of Tyrie vs. Fletcher, Cowp., 669; and Bermon vs. Woodbridge, Doug., 758.

[c] Cowp. 669.

not run the risk, the consideration for which the premium or money was put into his hands fails and therefore he ought to return it." If then the general law of insurance is applicable to life policies, and there appears no reason why it should not be, there may be many cases in which a return of premium might be insisted upon.

Where a policy is void from want of interest,[d] or from the breach of an affirmative warranty, from misrepresentation or concealment, the risk can not be considered as having ever had inception; for where the assurer, from any of these causes, is not bound to pay the amount of the policy, on the happening of the event assured against, he can not be considered as having undertaken any risk. Where there has been fraud on the part of the assured, although the assurer can not be considered to have undertaken any risk, he not being liable to pay the amount, still, on another principle, the courts have declared that the premium shall be retained.

[d] Routh vs. Thompson, 11 East, 435.

Where the policy becomes void from the breach of a promissory warranty, as where the assured, contrary to the terms of the agreement, visits the places, or goes beyond the limits stated in the policy, or is engaged in the occupations prohibited by the policy, or becomes addicted to habits of intemperance contrary to the agreement, in all such cases the assurers would, doubtless, be entitled to retain the premium, as the risk has actually commenced, and been undergone, from the date of the policy to the time of the breach.

A return of premium may, therefore, be insisted on in the following cases:

Whenever the policy is void for want of interest.[e]

Whenever the policy is void for misrepresentation, without fraud on the part of the assured.[f]

Whenever the policy is void for concealment, without fraud on the part of the assured.[g]

[e] Routh vs. Thompson, 11 East, 435.

[f] Feise vs. Parkinson, 4 Taunt., 640.

[g] Tyler vs. Horne, Park., 3 ed., 218.

Whenever there has been fraud on the part of the assurers.[h]

But when there has been fraud on the part of the assured, the premium is forfeited:[i] and in every case of actual fraud, either by the assured or his agent, the underwriter will be entitled to retain the premium.[j]

[h] Duffel vs. Wilson, 1 Campb., 401.

[i] Tyler vs. Horne, Park, 3 ed., 218.

[j] Chapman vs. Frazer, Park, 3 ed., 218.

CHAPTER X.

OF THE RECOVERY OF INTEREST, ON THE AMOUNT SECURED BY THE POLICY, FROM THE TIME WHEN IT BECAME DUE.

Interest is recoverable on the amount secured by the policy, from the period when the same became due.

A contrary rule, with regard to the interest, has been laid down in England.

In Higgins vs. Sargent,[a] an action arising on a life policy, it was held: that the insured is not entitled to recover interest on the principal sum secured by the policy, even from the time when it had become payable. The amount was made payable six months after due proof of the death, and the court held, that interest was not recoverable on the amount even after six

[a] 2 Barn. & Cres., 348.

months from the time of due proof of the death, on the ground, "that interest is allowed by law only upon mercantile securities, or in those cases where there has been an express promise to pay interest, or where such promise is to be implied from the usage of trade or other circumstances."

The law, in this country, was formerly in accordance with the above decision, but it has been gradually undergoing a change, and now, in the state of New York, and probably in otheer states, interest would be recoverable on the amount secured by the policy, from the time when it became due. It was held by the Court of Appeals of the state of New York,[b] that "where a debtor is in default for not paying money, delivering property, or rendering services in pursuance of his contract, he is chargeable with interest, from the time of default, on the specified amount of money, or the value of the property or services, at the time they should have been paid or rendered." Chief Justice Bronson, in delivering the opinion of the court, says:

[b] Van Rensselaer vs. Jewett, 2 Comst., 135.

"Whenever a debtor is in default for not paying money, delivering property, or rendering services in pursuance of his contract, justice requires that he should indemnify the creditor for the wrong which has been done him; and a just indemnity, though it may sometimes be more, can never be less than the specified amount of money, or the value of the property or services, at the time they should have been paid or rendered, with interest from the time of the default, until the obligation is discharged; and if the creditor is obliged to resort to the courts for redress, he ought, in all such cases, to recover interest in addition to the debt, by way of damages. It is true, that in an agreement like the one under consideration, the amount of the debt can only be ascertained by an inquiry concerning the value of the property and services. But the value can be ascertained, and when that has been done, the creditor, as a question of principle, is just as plainly entitled to interest after the default, as he would be if the like sum had been payable in money. The English courts do not allow interest in such cases; and

I feel some difficulty in saying that it can be allowed here, without the aid of an act of the legislature to authorize it. But the courts, in this and other states, have, for many years, been tending to the conclusion, which we have finally reached, that a man who breaks his contract to pay a debt, whether the payment was to be made in money, or in any thing else, shall indemnify the creditor, so far as that can be done, by adding interest to the amount of damage which was sustained on the day of the breach. The rule is just in itself; and, as it is now nearly nineteen years since the point was decided in favor of the creditor, and eight out of the nine judges of the Supreme Court have, at different times, concurred in the opinion, we think the question should be regarded as settled."[c]

[c] In the recent case, in the N. Y. Supreme Court, of Valton and Adams vs. The National Loan Fund Life Assurance Society, tried at the Albany Circuit, held on the 15th of November 1852, the jury, under the direction of the court, found interest on the amount secured by the policy, from the time when such amount should have been paid.

CHAPTER XI.

MISCELLANEOUS DECISIONS TOUCHING THE CONTRACT OF ASSURANCE.[a]

Payment to a creditor by an assurance company of the amount of a policy on the life of a debtor, is not, pro tanto, a satisfaction of the debt of the latter. Thus, in Humphrey vs. Arabin,[b] the question was, whether a creditor who has assured the life of his debtor, and has received the amount of the policy from the office, can be compelled to set off the sum so received against the debt?

The Lord Chancellor said: "The question here arises upon exceptions, taken by a judgment creditor, of the name of Inderwicke, who

[a] We have placed under this head a few cases not appropriately falling under any of the preceding divisions.

[b] Lloyd & Gould's cases (tempore Plunkett), 318.

claimed, before the master, the amount of certain judgments against the late Mr. Latouche, and which, if not to be considered as discharged, are incumbrances still affecting the mortgaged premises. It is not necessary to go into the details of the case, or the particulars of the several exceptions, it being admitted that they all depend on the single question, whether assurances, made by the creditor on the life of the debtor, and which, since the death of the debtor, have been discharged by the assurance company, are to be considered, pro tanto, a discharge of the debt, as between the creditor and the debtor; the master has decided in the affirmative, and, as he has informed me, has grounded his decision on the case of Godsall vs. Boldero."[c] The Chancellor then said, that the proposition, that "the satisfaction of the debt discharges the insurer," is now undeniable; but that it by no means follows, that the converse of the proposition is true, and that the payment by the insurer shall amount to a satisfaction of the debt; that no authority had

[c] 9 East, 72.

been cited to sustain this latter proposition, and, although the case of ex parte Andrews[d] had been cited for the purpose, that it did not decide the question, but appeared to him to furnish a contrary inference. The case, therefore, must be determined on principle, and I must find a clear one, before I can say that the debtor, who had no concern, or right, or interest in the assurance, is, by the circumstance of the amount of it being discharged by a third person, to be exempted from the payment of his own just debt. The argument of Lord Ellenborough, in the case of Godsall vs. Boldero, rests merely on the decision of Lord Mansfield, in the case of Hamilton vs. Mendes,[e] and both cases go, altogether, upon the contract with the insurers being a contract of indemnity. Now this grows solely out of the enactments of the legislature, and on the contract being such an one as the law gives effect to; and it is a mistake to say, as it has been argued in this case, that therefore the insurer is in the nature of a surety

[d] 2 Rose, 410. 1 Madd., 573.

[e] 2 Burr., 1198.

for the payment of the debt of the principal debtor. The protection of the insurer grows merely out of the policy of the law, and the particular enactment of the legislature; but with reference either to the party who gets the insurance, or with reference to the debtor, there is no one circumstance which puts him in the character of a surety for the debtor. He has no right to call on the debtor's executors to pay the debt, and it is no concern of his whether the debtor is able to pay, or utterly insolvent.

It remains, then, to consider the case as between the original creditor and debtor. It is clear that the creditor has no right to call upon the debtor to make the assurance, or to pay any part of the expense of it, or, if the assurance company should become insolvent, to repay him any of the premiums he has paid. The debtor, on the other hand, has no right to call on the creditor to make any assurance, or to keep it alive when made; he knows not whether it has been made or not; it is a contract between other persons, with which he has no concern or

privity, and I can not find any principle or authority for holding that he should, by any thing growing out of that contract, be discharged from the payment of his just debt, which he has neither discharged nor satisfied, nor caused to be discharged or satisfied. I must, therefore, allow the exception.

A creditor can not compel a debtor to pay the expense of insuring his life, nor after the debt is paid can he call on him to reimburse the amount expended for such insurance.[f]

Premiums of life assurance can not be charged on the vendor of a rescinded annuity.[g]

In Phillips vs. Eastwood, it was held, that a policy of assurance on the life of a debtor is a security for a sum to be paid, and may pass in a will under the words debentures or debts.[h]

An annuity for four lives, with a covenant that the grantor should insure the principal sum within thirty days after the expiration of the third life, is not an usurious contract.[i]

[f] Dicta of the Lord Chancellor, in Humphrey vs. Arabin.

[g] 1 Taunt., 522.

[h] Lloyd & Goold's cases (tempore Sugden), 291.

[i] 7 Bing., 150.

A policy of insurance on the life of A had been assigned to the plaintiff; the defendant, having privately ascertained that A was dangerously ill, treats with the plaintiff for the purchase of the policy for a small sum, representing it as the then value of the policy; the plaintiff not being aware of A's illness; held, that the sale was void, and that the plaintiff might recover the value of the policy in an action of trover.[j]

A policy of insurance for £3000, on A's life, was assigned to trustees, and by a deed of even date trusts were declared of it, by the description of "the sum of £3000, for which A's life was insured," and power was given to B to dispose of it by will; B, after reciting the settlement, bequeathed £1000, part of the sum of £3000, to A, and the remaining sum of £2000 to C; at A's death £9000 was received under the policy. Held, that the whole fruits of the policy were subject to the trusts of the settlement, and passed by the bequests to A and C, in proportion to their legacies. The Vice

[j] Jones vs. Keene, 2 M. & Rob., 348.

Chancellor said: When the second settlement was made, in contemplation of the daughter's marriage, it had not occurred to the parties, that, according to the rules of The Equitable Assurance Office, a much larger sum would be payable under the policy, than the original sum insured, and in treating, therefore, of the daughter's interest under the father's settlement, they described it as a sum of £3000. But it is plain, whatever was the language used, that it was the intention of the parties to comprise, in the daughter's settlement, her whole interest under the policy of assurance; and the effect must be the same as if more correct terms of description had been used in the settlement. As the sum of £3000 was mentioned in the settlement, as descriptive of the daughter's interest in the policy of assurance, so the daughter uses the same term, as descriptive of the same interest, in her will; and when she divides that interest into thirds, by the gift of three equal sums of £1000 each, the words will pass to each legatee an equal third of the whole benefit of the policy.[k]

[k] Courtney vs. Ferrers, 1 Sim. R., 187.

When a policy of insurance has been effected on the life of a debtor, as a security to the lender of money, and the lender charges the premiums to the account of the debtor, who pays them, if the principal is afterwards paid, the debtor, or his representative, is entitled to the policy.[1]

The voluntary payment of premiums confers on the payer no interest in the policy.[m]

[1] Holland vs. Smith, 6 Esp., 11.

[m] Burridge vs. Row, 1 Yon. & C., 183.

CHAPTER XII.

OF THE DIFFERENT SYSTEMS OF ASSURANCE.

1. Of the proprietary, or joint stock system.
2. Of the mutual system.
3. Of the mixed system.

1. *Of the Proprietary, or Joint Stock System.*

The practice of assuring lives, when originally introduced, was designed, solely, to enable the representatives of those who associated together and contributed annually to a fund, to receive, on the decease of the party, such a sum, in proportion to the amount subscribed by the party, as, after the discharge of the losses, the association might be enabled to pay; and, as their names indicate, these associations were designed, solely, for the benevolent object of raising a fund to be distributed among the widows and children of those who died,

and who, by their annual contributions, had attempted to alleviate the loss which such survivors might experience by their death.

Life assurance was then in its infancy, but time and experience, and a careful examination of the probabilities of the duration of life, soon made it evident that its practice might be turned to profit. With this object the business was undertaken by individuals; but they being only able to take risks for a limited period and amount, and not affording sufficient security to the assured, the business was soon engrossed by incorporated companies, which presented the advantages of being more secure, and of being able to take risks for any length of time.

These were, and are still known, as proprietary, or joint stock companies. The proprietary system, therefore, is, where a number of individuals unite together and form a capital, and undertake, in consideration of annual premiums to be paid them by the assured, to pay to his representatives a fixed sum at his death. In this system, the capital subscribed stands as a guaranty for the payment of the

policies, and whatever profits are derived from the excess of the premiums over the losses, belong to those who have subscribed to the capital stock. The stock is usually made up of transferable shares, and the profits, if any, are divided among the holders of such shares.

2. *Of the Mutual System.*

The mutual system, which, as before stated,[a] was the invention of Mr. Simpson, or was, at least, first publicly announced by him, is, where the parties mutually assure each other; or, in other words, where the parties are both assurers and assured. In theory, each party is supposed to pay nothing for being assured, but is required, on a loss, to pay his proportion thereof. But as this could not conveniently be carried out in practice, the plan of operation has been, for each party to pay a sufficient portion of the premium, in cash, to meet the current expenses, and to give a note for the residue, which is called a premium note,

[a] Ante page 6, chap. 1.

and on a loss arising, greater than can be met by the cash payments, the amount is assessed, rateably, on these notes.

The cash premium, at first paid by the assured, under this system, is much less than under the proprietary system; but, then, there is the contingency of the assured being required to pay an assessment on his note; and, should the assessment be large, the sum actually required for the assurance may be larger than that demanded by a proprietary company; for, the cash premium and premium note, together, are much larger than the amount required by the latter.

Some of these mutual companies, however, have been managed so prudently as to have accumulated a large surplus fund, so large that the contingency of the assured being called on to pay an assessment on his note is rendered very remote. This plan is, however, objectionable, on account of the assured being, in fact, not only assurers of each other's lives, but also of each other's note; and from the difficulty of collecting assessments on the notes, which

are often of but trifling amount, and of being frequently called on to make such assessments.

To obviate these objections, another modification of the mutual system has been introduced by some companies, which is, for the assured to pay the whole premium in cash, and for the surplus, if any, to be returned at stated periods, in the shape of dividends.

When the surplus fund of either of these species of companies becomes very large, and more than what is considered necessary to provide for losses, it is usual to divide a portion of it among the assured; for, as the assured are liable for the losses that may arise, so, they are also entitled to share in the profits.

In the division of these surplus funds, or profits, there is great danger, that through the eagerness of the assured to derive immediate gain, and of the directors by declaring large dividends to have the affairs of the company appear prosperous, and thus induce others to assure, in the hope of also deriving profit, too large a division may be made, and thus the final security of the assured be impaired.

The directors of the various companies establish, each, their different rules, as to the time, manner and extent of these divisions.

Some companies, which is probably the wisest and most prudent course, make no division of the profits; but, on the coming in of the claim, pay, not only the amount of the policy, but, the profits which have accrued thereon.

3. *Of the Mixed System.*

The mixed system, as its name imports, is the union of the two preceding; a capital stock being subscribed, and the subscribers agreeing to share a certain proportion of the profits among the assured.

We have now given an insight into the various systems of assurance, and their practical operation, without any attempt, or intention to discuss, advocate, or disparage the merits of either, referring the reader, therefor, to the circulars of the different companies.[b]

[b] See, also, as to the merits of the different systems, Edin. Rev., vol. xlv, p. 480; and Pocock on Life Assurance.

APPENDIX.

APPENDIX.

A.

FORM OF A POLICY.

This Policy of Insurance, Witnesseth—That the .... Company, in consideration of ..... dollars and ..... cents, to them in hand paid by ....., of ....., and of the annual premium of ..... dollars and .... cents, to be paid on or before the ..... day of ..... in every year, during the continuance of this Policy, do insure the life of ..... of ...., in the county of ..... , State of ....., for the sole use of ....., in the amount of .... dollars, for the term of .....

And the said Company promise and agree to and with the said ..... executors, administrators and assigns, well and truly to pay, or cause to be paid, the sum of ..... dollars to the said assured ..... executors, administrators and assigns, within ..... days, after due notice and proof of the death of the said ....

. . . . , *deducting*[a] *therefrom all notes taken for premiums, remaining unpaid at that date.*

PROVIDED ALWAYS, and it is hereby declared to be the true intent and meaning of this Policy, and the same is accepted by the assured and the said . . . . . upon these express conditions: That in case the said . . . . . shall, without the consent of this Company, previously obtained and endorsed upon this Policy, visit Oregon, California, or New Mexico, or pass beyond the settled limits of the United States (excepting into the settled limits of British North America), or shall, without such previous consent, thus endorsed, visit those parts of the United States which lie south of the southern boundaries of the States of Virginia, Kentucky and Missouri, between the first day of July and the first day of November, or shall, without such previous consent, thus endorsed, enter into any active military or naval service, or shall, without such previous consent, thus endorsed, be personally employed as an engineer or fireman in running a locomotive or steamer, or in the manufacture of gunpowder, or in case . . . . . shall become so far intemperate as to seriously impair . . . . . health, or induce delirium tremens, or shall die by . . . . . own hand, or in consequence of a duel, or the violation of any State, National, or

(a)—This form is selected from a number in actual use; it is, as will be readily perceived, designed for a mutual company, but by omitting the parts in italics it can be adapted to proprietary companies.

Provincial law, or by the hands of justice, or shall, without the consent of the Company, previously obtained, and endorsed on this Policy, make a voyage at sea, or upon any lake, pond or river, or along the shores of the Atlantic Ocean (excepting as passenger, by steamers, first class sailing vessels, yachts or pleasure boats), within the months of ...., and the limits hereinbefore prohibited, this Policy shall be null, void, and of no effect.

AND IT IS ALSO UNDERSTOOD AND AGREED, to be the true intent and meaning hereof, that if the proposal, answers and declaration, made by the said ...., and bearing date, the .... day of ....., 18.., and upon the faith of which this agreement is made, and this Policy is issued, shall be found, in any respects, untrue, then, and in such case, this Policy shall be null and void; and in case the full amount of the said Annual Premium shall not be promptly paid on or before the several days above mentioned for the payment thereof, then, and in every such case, the liability of the said Company for the payment of the sum insured, or any part of it, shall cease, and this Policy shall determine and be void. AND IT IS FURTHER AGREED, that in every case where this Policy shall cease, or become null or void, all previous payments made thereon, *and all dividends accruing therefrom*, shall be forfeited to the said Company.

In Witness Whereof, the ..... have, by their President and Secretary, signed this Contract at their office in ... ., this ..... day of ... ., 18.., but the same shall not be binding until countersigned and delivered by ... ., Agent at ....., and the advance premium paid.

...., President.

....., *Secretary.*

L. S.

Countersigned at ....., this ..... day of ....., 18..

..... *Agent.*

B.

I. TABLES OF MORTALITY.

Showing the number of persons living at the end of every year, out of 1000 *born at the same time, as calculated by the different authors for the several places stated.*

Age.	Breslau, by Dr. Halley.	Sweden, by Dr. Wagentine.	Northampton, by Dr. Price.	Carlisle, by Dr. Heysham.	Age.	Breslau, by Dr. Halley.	Sweden by Dr. Wagentine.	Northampton, by Dr. Price.	Carlisle, by Dr. Heysham.
	1000	1000	1000	1000	34	384	495	351	542
1	769	780	743	846	35	377	488	344	536
2	658	730	625	778	36	370	482	338	531
3	614	695	582	727	37	363	477	331	525
4	585	671	553	700	38	356	471	325	519
5	563	656	536	680	39	349	465	318	514
6	546	644	521	668	40	342	459	312	507
7	532	634	509	659	41	335	453	305	501
8	523	625	499	654	42	328	445	299	494
9	515	618	492	649	43	321	437	292	487
10	508	611	487	646	44	314	430	285	480
11	502	606	483	643	45	307	422	279	473
12	497	602	478	640	46	299	414	272	466
13	492	597	474	637	47	291	407	265	459
14	488	594	470	633	48	283	400	259	452
15	483	590	465	630	49	275	392	252	446
16	479	586	461	626	50	267	385	245	440
17	474	582	457	622	51	259	376	238	434
18	470	578	452	618	52	250	367	321	428
19	465	574	446	613	53	241	358	224	247
20	461	570	441	609	54	232	349	217	411
21	456	565	434	605	55	224	340	210	404
22	451	560	428	600	56	216	331	203	400
23	446	555	421	596	57	209	322	196	392
24	441	551	415	592	58	201	312	189	384
25	436	546	409	588	59	193	303	182	375
26	431	541	402	584	60	186	293	175	364
27	426	535	396	579	61	178	282	168	352
28	421	530	389	575	62	170	271	161	340
29	415	525	383	570	63	163	259	154	327
30	409	519	376	564	64	155	247	147	314
31	403	513	370	558	65	147	235	140	302
32	397	507	364	553	66	140	224	133	289
33	391	501	357	547	67	132	212	126	277

Age.	Breslau, by Dr. Halley.	Sweden, by Dr. Wargentine.	Northampton, by Dr. Price.	Carlisle, by Dr. Heysham.	Age.	Breslau, by Dr. Halley.	Sweden, by Dr. Wargentine.	Northampton, by Dr. Price.	Carlisle, by Dr. Heysham.
68	124	200	119	265	87	6	11	9	30
69	117	187	113	252	88	4	8	7	23
70	109	175	106	240	89	2	6	5	16
71	101	162	99	228	90	1	5	4	14
72	93	149	92	214	91		3	3	10
73	84	135	85	200	92		2	2	7
74	77	121	78	184	93		1	1	5
75	69	108	71	167	94			1	4
76	61	96	65	151	95				3
77	53	85	58	136	96				2
78	45	74	52	121	97				2
79	38	65	46	108	98				1
80	32	56	40	95	99				1
81	26	47	35	84	100				1
82	22	38	30	72	101				1
83	18	31	25	62	102				
84	15	24	20	53					
85	12	19	16	44					
86	9	14	12	37					

II. EXPECTATION,

Table showing the expectation or mean duration of life, at every age, according to the Carlisle and Northampton tables.

Completed Age.	Carlisle Experience.	Northampton Experience.	Completed Age.	Carlisle Experience.	Northampton Experience.
0	38.72	25.18	40	27.61	23.08
1	44.68	32.74	41	26.97	22.56
2	47.55	37.79	42	26.34	22.04
3	49.82	39.55	43	25.71	21.54
4	50.76	40.58	44	25.09	21.03
5	51 25	40.84	45	24.46	20.52
6	51.17	41.07	46	23.82	20.02
7	50.80	41.03	47	23.17	19.51
8	50.24	40.79	48	22.50	19.00
9	49.57	40.36	49	21.81	18.49
10	48.82	39.78	50	21.11	17.99
11	48.04	39.14	51	20.39	17 50
12	47.27	38.49	52	19.68	17.02
13	46.51	37.83	53	18.97	16.54
14	45.75	37.17	54	18.28	16.06
15	45.00	36.51	55	17.58	15.58
16	44.27	35.85	56	16.89	15.10
17	43.57	35.20	57	16.21	14.63
18	42.89	34.58	58	15.55	14.15
19	42.17	33.99	59	14.92	13.68
20	41.46	33.43	60	14.34	13.21
21	40.75	32.90	61	13.82	12.75
22	40.04	32.39	62	13.31	12.28
23	39.31	31.88	63	12.81	11.81
24	38.59	31.36	64	12 30	11.35
25	37.86	30.85	65	11.79	10.88
26	37.14	30.33	66	11.27	10.42
27	36.41	29.82	67	10.75	9.96
28	35.69	29.30	68	10.23	9.50
29	35.00	28.79	69	9 70	9.05
30	34.34	28.27	70	9.18	8.60
31	33.68	27.76	71	8.65	8.17
32	33.03	27.24	72	8.16	7.74
33	32.36	26.72	73	7.72	7.33
34	31.68	26.20	74	7.33	6.92
35	31.00	25.68	75	7.01	6.54
36	30.32	25.16	76	6.69	6.18
37	29.64	24.64	77	6.40	5.83
38	28.96	24.12	78	6.12	5.48
39	28.28	23.60	79	5.80	5.11
			80	5.51	4.75

III. LIFE TABLES,

According to the late census of the United States, Massachusetts being taken as a standard for the Northern States, and Maryland for the Middle States.

1. ANNUAL DEATHS PER CENT, 1850.

Ages.	Massachusetts		Maryland.		England, 1841.	
	Males.	Females.	Males.	Females.	Males.	Females.
0 to 5	7.105	6.052	5.466	4.875	5.838	5.880
5 10	1.168	983	1.041	855	955	922
10 15	452	573	477	606	509	545
15 20	872	831	605	757	718	801
20 30	998	1.170	896	938	949	942
30 40	1.253	1.346	991	1.146	1.080	1.121
40 50	1.513	1.325	1 884	1.249	1.410	1.308
50 60	2.067	1.654	2.433	1.712	2.230	1.938
60 70	3.482	2.960	3.405	3.285	4.232	3.761
70 80	6.767	5.762	8.977	7.221	9.150	8.378
80 90	15.000	13.470	15.157	12.280	19.085	18.085
90 100	35.240	27.540	31.132	23.430	37.039	34.057

2. EXPECTATION OF LIFE.

Completed Age.	Massachusetts.		Maryland.		England.		France.	
	Males. Yrs.	Fema's. Yrs.	Males. Yrs.	Fema's Yrs.	Males Yrs.	Fema's. Yrs.	Males. Yrs	Fema's Yrs.
0.....	38.3	40.5	41.8	44.9	40.2	42.2	38.3	40.8
10.....	48.0	47 2	47.3	49.5	47.1	47.8	47.0	47.4
20.....	40.1	40.2	39.7	42 1	39.9	40.8	40.0	40.1
30.....	34.0	35.4	32.9	35.7	33.1	34.3	34.0	33.4
40.....	27.9	27.8	25.8	29.5	26.6	27.7	27.0	26.6
50.....	21.6	23.5	20.2	22.7	20.0	21.1	19.9	19.6
60.....	15.6	17.0	14.4	16.0	13.6	14.4	13 3	13.2
70.....	10.2	11.8	9.1	10.5	8.5	9 0	8.1	8.1
80.....	5.9	6.4	6.2	7.0	4.9	5.2	4.8	4.8
90.....	2.8	3.0	3.9	4.3	2.7	2.8	3.2	3.2

3. EXPECTATION OF LIFE FOR COLORED PERSONS.

Completed Age.	New England.		Maryland.		Louisana.	
	Colored.		Slaves.		Colored.	
	Males.	Females.	Males.	Females.	Males.	Females.
0.....	39.75	42.20	38.47	39.47	28.89	34.09
10.....	42.92	45.75	45.30	41.00	35.92	40.69
20.....	35.87	39.92	39.28	39.63	30.48	35.36
30.....	29.77	34.96	34.41	35.62	26.87	30.86
40.....	22.83	28.75	27.50	29.00	23.25	25.85
50.....	18.27	22.11	21.16	23.17	19.13	21.07
60.....	13.89	17.31	14.32	16.71	14.75	15.27
70.....	9.42	13.06	8.76	10.57	11.33	10.93
80.....	6.44	7.87	5.40	6.80	5.38	6.16
90	3.60	4.61	3.80	4.00	3.43	3.34

4. RATIO OF MORTALITY.

For general estimates, adopting the current classification of the States, the American census exhibits the following ratios of mortality, disregarding the ages at death:

	Annual deaths per cent.	Ratio to the number living.
New England States,	1.55	1 to 64
Middle States with Ohio,	1.39	1 to 72
Central Slave States,	1.38	1 to 73
Coast Planting States,	1.37	1 to 73
Northwestern States,	1.24	1 to 80
United States, total,	1.38	1 to 73

IV. COMPOUND INTEREST TABLE,

Showing the value of $1 improved at compound interest, for any number of years not exceeding 100, at 4, 5, 6, and 7 per cent.

Years.	4 per cent.	5 per cent.	6 per cent.	7 per cent.
1	1.040000	1.050000	1.060000	1.070000
2	1.081600	1.102500	1.123600	1.144900
3	1.124864	1.157625	1.191016	1.225043
4	1.169859	1.215506	1.262477	1.310796
5	1.216653	1.276282	1.338226	1.402552
6	1.265319	1.340096	1.418519	1.500730
7	1.315932	1.407100	1.503630	1.605781
8	1.368569	1.477455	1.593848	1.718186
9	1.423312	1.551328	1.689479	1.838459
10	1.480244	1.628895	1.790848	1.967151
11	1.539454	1.710339	1.898299	2.104852
12	1.601032	1.795856	2.012196	2.252192
13	1.665074	1.885649	2.132928	2.409845
14	1.731676	1.979932	2.260904	2.578534
15	1.800944	2.078928	2.396558	2.759032
16	1.872981	2.182875	2.540352	2.952164
17	1.947901	2.292018	2.692773	3.158815
18	2.025817	2.406619	2.854339	3.379932
19	2.106849	2.526950	3.025600	3.616528
20	2.191123	2.653298	3.207135	3.869684
21	2.278768	2.785963	3.399564	4.140562
22	2.369919	2.925261	3.603537	4.430402
23	2.464716	3.071524	3.819750	4.740530
24	2.563304	3.225100	4.048935	5.072367
25	2.665836	3.386355	4.291871	5.427433
26	2.772470	3.555673	4.549383	5.807353
27	2.883369	3.733456	4.822346	6.213868
28	2.998703	3.920129	5.111687	6.648838
29	3.118651	4.116136	5.418388	7.114257
30	3.243398	4.331942	5.743491	7 612255
31	3.373133	4.538039	6.088101	8.145113
32	3.508059	4.764941	6 453387	8.715271
33	3.648381	5.003189	6.840590	9.325340
34	3.794316	5.253348	7.251025	9.978114
35	3.946089	5.516015	7.686087	10.676581
36	4.103933	5.791816	8.147252	11.423942
37	4.268090	6.081407	8.636087	12.223618
38	4.438813	6.385477	9.154252	13.079271
39	4.616366	6.704751	9.703507	13.994820
40	4.801021	7.039989	10.285718	14.974458
41	4.993061	7.391988	10 902861	16.022670
42	5.192784	7.761588	11.557033	17.144257
43	5.400495	8.149667	12.250455	18.344355
44	5.616515	8.557150	12.985482	19.628460
45	5.841176	8.985008	13.764611	21.002452
46	6.074823	9.434258	14.590487	22.472623
47	6.317816	9.905971	15.465917	24.045707
48	6.570528	10.401270	16.393872	25.728907
49	6.833349	10.921333	17.377504	27.529930
50	7.106683	11.467400	18.420154	29.457025

Years.	4 per cent.	5 per cent.	6 per cent.	7 per cent.
51	7.390951	12.040770	19.525364	31.519017
52	7.686589	12.642808	20.696885	33.725348
53	7.994052	13.274949	21.938698	36.086122
54	8.313814	13.938696	23.255020	38.612151
55	8.646367	14.635631	24.650322	41.315001
56	8.992222	15.367412	26.129341	44.207052
57	9.351910	16.135783	27.697101	47.301545
58	9.725987	16.942572	29.358927	50.612653
59	10.115026	17.789701	31.120463	54.155539
60	10.519627	18.679186	32.987691	57.946427
61	10.940413	19.613145	34.966952	62.002677
62	11.378029	20.593802	37.064969	66.342864
63	11.833150	21.623493	39.288868	70.986865
64	12.306476	22.704667	41r646200	75.955945
65	12.798735	23.839901	44.144972	81.272861
66	13.310685	25.031896	46.793670	86.961962
67	13.843112	26.283490	49.601290	93.049299
68	14.396836	27.597665	52.577368	99.562750
69	14.972710	28.977548	55.732010	106 532142
70	15.571618	30.426426	59.075930	113.989392
71	16.194483	31.947747	62.620486	121.968650
72	16.842262	33.545134	66.377715	130.506455
73	17.515953	35.222391	70.360378	139.641907
74	18.216591	36.983510	74.582001	149.416840
75	18.945255	38.832686	79.056921	159.876019
76	19.703065	40.774320	83.800336	171.067341
77	20.491187	42.813036	88.828356	183.042054
78	21.310835	44.953688	94.158058	195.854998
79	22.163268	47.201372	99.807541	209.564848
80	23.049799	49.561441	105.795993	224.234388
81	23.971791	52.039513	112.143753	239.930795
82	24.930663	54.641489	118.872378	256.725950
83	25.927889	57.373563	126.004721	274.696767
84	26.965005	60.242241	133.565004	293.925541
85	28.043605	63.254353	141.578904	314.500328
86	29.165349	66.417071	150.073639	336.515351
87	30.331963	69.737925	159.078057	360.071426
88	31.545242	73.224821	168.622740	385.276426
89	32.807051	76.886062	178.740105	412.245776
90	34.119333	80.730365	189.464511	441.102980
91	35.484107	84.766883	200.832382	471.980188
92	36.903471	89.005227	212.882325	505.018802
93	38.379610	93.455489	225.655264	540.370118
94	39.914794	98.128263	239.194580	578.196026
95	41.511386	103.034676	253.546255	618.669748
96	43.171841	108.186410	268.759030	661.976630
97	44.898715	113.595731	284.884572	708.314994
98	46.694664	119.275517	301.977646	757.897044
99	48.562450	125.239293	320.096305	810.949837
100	50.504948	131.501258	339.302084	867.716326

ADDENDUM.

The decision in the case of Breasted vs. The Farmers' Loan and Trust Company, was affirmed by the Court of Appeals, at the June term, 1853. See page 107.

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